



MERO

MASHANTUCKET EMPLOYMENT RIGHTS OFFICE

Final Claim Determination

**For Claims under Title 33,
the Mashantucket Pequot Tribal and Native American Preference Law**

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| Case Name: Paul M. Reising v. Mashantucket Pequot Tribal Nation (Department of Housing) | Case Number: 2016-33042 |
| Date of Claim Filing: February 24, 2016 | Date of Determination: April 25, 2016 |

Paul M. Reising (“Claimant” or “Mr. Reising”) alleges in his Claim that he is a minimally qualified spouse of a member of the Mashantucket Pequot Tribe who was not hired by the Tribe’s Housing Department for the position of General Maintenance Repair on about December 11, 2015 in violation of the Tribal and Native American Preference Law (“Preference Law”), 33 M.P.T.L. ch. 1 § 5(a).

All Tribal law and procedural prerequisites having been satisfied, the claim is properly before the MERO for hearing and decision.

A formal hearing was held on March 29, 2016, pursuant to Title 33 and Title 40, during which both parties had full opportunity to present witnesses and evidence. The Claimant was not represented by an attorney. Attorney Marietta Anderson appeared on behalf of the Respondent. Claimant testified on his own behalf. Respondent called Director of Housing Juanita Montey, Program Manager Conrad “Buddy” Gardner and Building Official Michael Dobrowski. The parties waived post-hearing briefs and the record was closed.

I. Findings of Fact

After careful review and consideration of the record, as well as an assessment of the credibility of the witnesses, the below facts relevant to this determination are found.

A. Housing Department

The Housing Department of the Tribe is located on the Reservation and has a total of four (4) positions, the Director, Juanita Montey, an executive assistant, an administrative assistant and General Maintenance Repair. (T 12, 74-75)¹ Ms. Montey has served as the Director for about 18 years. (T 73) The Housing Department oversees various programs relating to housing on and off the Reservation,

¹ Transcript pages are designated T #; MERO exhibits are designated M #; Claimant exhibits are designated C #; Respondent exhibits are designated R #; and Joint exhibits are designated J #.

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which include about 111 properties. (T 73-74) The department's responsibilities include the maintenance of existing single family homes and two (2) duplexes, buying and selling properties and evictions. (T 76-77, 110-111) Most off Reservation properties are located in Ledyard. (T 86)

The General Maintenance and Repair position description was updated by the Housing Department before being posted in September, 2015. (J 1; T 107) Changes from the prior position description included a different title as well as removal of the mold remediation experience requirement. (T 112) Ms. Montey had not previously posted an open position and did not know what would be reflected on the position posting. (T-138)

B. General Maintenance and Repair Position

The language of the posting is the same as the synopsis from the position description. (Compare, J 1 and J 2) Both the posting and position description include the following summary description, "The incumbent performs routine maintenance and service calls, troubleshooting problems and repairs, and reports recommendations for repairs to management prior to scheduling repairs." (J 2)

The posting and position description also state, in part, "General knowledge of Tribal, State and Town building codes required, although knowledge of Tribal building codes can be developed post-hire..."² (J 1, J 2) Ms. Montey's intent in requiring "general knowledge" of the building codes was that the individual holding the position "know the Codes," "because they...have to oversee the contractors." (T 118) She believed such knowledge of the building codes was a minimum requirement of the position. (T 137) Ms. Montey is not familiar with building code requirements. (T 84)

The position posting also provides for "[g]eneral knowledge of hand tools, mechanical/electrical aptitude." (J 1) The representative required qualifications set forth on the position description include "[g]eneral knowledge of hand tools, mechanical/electrical aptitude, as well as general construction." (J 2)

The position posting provides for "[g]eneral knowledge of painting, drywall, carpentry, non-code related plumbing and electrical, roofing, floor tiles, hardwood flooring installation and refinishing and installation of siding, windows and doors, servicing gutters, power washing, water testing, changing locks, lawn mowing and snow removal." (J 1) The position description includes the ability to perform these identified "repair[] and routine maintenance" functions. (J 2)

² Mr. Dobrowski testified that town building codes are "supposed to be comparable" to the Connecticut State Building Code, but certain town inspectors may require modifications. (T 170) Construction in accordance with the State Building Code would also be compliant with the Tribal Building Code. (T 171-172) No testimony was offered regarding the specifics of the Ledyard Building Code or its enforcement. For ease of discussion, the Ledyard Building Code is considered to be substantially comparable to the Connecticut State Building Code.

The following appears on the position description under "Essential Duties and Responsibilities," "Oversight and quality control of contractors of various disciplines in their performance of services at Tribal properties." (J-2)

The General Maintenance and Repair employee is required to perform home repairs at the request of tenants or as a result of property inspections he conducted. (T 84-85) Some of the homes were not built to code. (T 121, 186-187, 204) The types of home repairs required include addressing tenant "emergencies" such as a toilet overflow, a tree falling on the house, lack of heat or water, or an appliance not working. (T 94) Other examples of repairs include stair and roof repairs. (T 77, 85) The General Maintenance and Repair employee would also be required to work with Ms. Montey to determine if work would be contracted, develop the scope of work based on which Procurement would solicit bids, and oversee the work of contractors through periodic spot checks. (T 106, 119-120) The position is required to work with the appropriate inspector, whether it be the Tribe's Building Official or the Ledyard Building Inspector to make certain construction is code compliant. (T 86-87) The failure to perform the position adequately could result in disgruntled tenants or increased Housing Department costs. (T 79-80)

As of the hearing, the General Maintenance and Repair position had been open since October 6, 2015. (T 101) Mr. Gardner, who has been employed by the Tribe for 22 years and currently works as a Program Manager for the Planning and Community Development Department overseeing construction projects, has assisted the Housing Department by overseeing the work of contractors during the vacancy. (T 102, 108, 185-186) He has not directly performed home repairs for the Housing Department. (T 189) When the Housing Director requires a scope of work to be identified, Mr. Gardner walks through the house and identifies potential problems, then develops the scope of work relied upon by Procurement in soliciting bids for the work. (T 205) Most recently, he oversaw the repair of a property in Ledyard that began as a siding and window repair, but was expanded to include deck repair after he discovered a "deficiency in the existing structural integrity of the deck" and worked with the Ledyard building inspector to determine an appropriate course of action. (T 186-187, 203) Another property "had some deficiencies in the existing construction," including a barrier where an inner partition wall met the roofline in a manner that trapped air from traveling up and out through the ridge vent. (T 204) Mr. Gardner believed that the venting blockage was originally identified by the former General Maintenance and Repair employee.³ (T 204) Mr. Gardner noted that the venting issue was a "unique situation" that he had not encountered previously. (T 204)

C. Claimant's Application

Mr. Reising is the spouse of Tribal member Kelly Reising. (Ex. M 5, Answer, ¶ 1) Claimant is in good standing with the Tribe. (T 14) Claimant applied for the position of General Maintenance Repair. (J 3)

³ The individual who held the position previously was a construction contractor who operated his own construction business. (T 118)

The letter he submitted in support of his application states, in part, "In these troubled financial times, as an experienced maintenance person I will certainly keep your Maintenance department within budget and up to code." (J 3)

Sam Agnello from Human Resources initially assessed Claimant as qualified for the position of General Maintenance and Repair based on his written application materials. (T 27) Claimant proceeded to the next step, an interview by Ms. Montey, Mr. Dobrowski and Mr. Gardner, with a housing employee present taking notes. (T 27-29, 108-109) Mr. Dobrowski has studied civil engineering and architecture and has worked for the Tribe in various capacities over 21 years, including as a construction inspector, in quality control and currently as a Connecticut licensed building inspector. (T 152-153) Mr. Gardner holds a Bachelors of Science degree with a focus on construction management, and is a Connecticut licensed land surveyor, a certified subsurface sewage disposal agent and a licensed home construction contractor. (T 196)

Claimant's maintenance and repair work experience consists of his current position as a maintenance technician for a "very high end" assisted living facility, which he has held since January, 2013 (T 8, J 3) The facility consists of 75 apartments within a building. (T 26, 43) Claimant and the facility's Director of Building Operations are the only facility employees who perform the maintenance. (T 43) In his job, Claimant uses hand tools daily and has repaired or replaced toilets, drywall, air conditioners, and siding. (T 17, 25, 43-44, 47-48) He testified that he is "very skilled" in performing mechanical and electrical work, explaining that each apartment has its own HVAC unit that he and the Director are "constantly repairing and replacing..., which includes electrical work on the units." (T 25) On his own home, he has personally installed tile, renovated bathrooms, serviced gutters and pulled a permit in the Town of Ledyard. (T 45-46, 51, M 9) Claimant testified to having general knowledge of all the repair functions listing on the position posting with the exception of roofing, although he could "repair and replace a shingle" and had repaired his own roof. (T 34-36, 41)

At the assisted living facility, Claimant has the independent authority to determine when he is unable to perform a repair and requires a contractor. (T 19) The facility is one of 52 properties under the same ownership. (T 65) When a need for a contractor is reported, the corporate office sends a contractor that is routinely retained for the particular scope of work, such as Emcore for HVAC repairs. (T 20) Claimant has overseen work performed at the facility by contractors. (T 21)

Claimant testified that he has general knowledge of state and town building codes. (T 23-24) Claimant submitted a "General Knowledge" definition from Wikipedia, the following portion of which was highlighted, "General knowledge is an important component of crystallized intelligence and is strongly associated with general intelligence, and with openness to experience." (C 1) When Claimant has a question about code compliance, he looks up the answer in the State Building Code. (T 49-50) He has not had occasion to question whether a contractor's work for the assisted living facility was Building Code compliant. (T 70) When asked at the hearing to explain how he would determine if a contractor's

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work was code compliant, Claimant responded, "Well, it's my understanding as a general maintenance/repair person, you're doing repairs....everything should be built up to Code. So you're repairing and replacing. I'm not constructing." (T 66-67)

Ms. Montey asked Mr. Dobrowski, who she relied on for his building code expertise, to develop questions for the applicant interviews that related to knowledge of the building codes. (T 107, 116) Mr. Dobrowski defined general knowledge of the building codes as being "familiar with the elements of the Code one would encounter every day, things that are obviously safety related." (T 155) Mr. Dobrowski developed three (3) questions for the interviews. (T 172-174)

The first of Mr. Dobrowski's questions asked in the interview of Claimant was the height of a stair railing and maximum distance between balusters. (M 9) Claimant responded that he did not know. (M 9, T 32) Mr. Dobrowski expected that "someone...having general knowledge of the Code...would at least recognize that there is a specific requirement and should be able to be close as to what it is or a range...[For] the stair rail height, there is a range [but] [t]he distance between the balusters is a specific measurement." (T 173) When asked during the interview if he knew where to find the information, Claimant responded, "Absolutely." (J 9) Mr. Dobrowski did not "have a comfort level" with Claimant's response because he believed Claimant should have given an indication of where he would look for the information. (T 174) At the hearing, Claimant confirmed that he did not know the answer in the interview, explaining that "being in maintenance, I would be repairing the bannister, not actually making the bannister. Anything that's missing from the bannister, you replace and repair." (T 32)

Another of Mr. Dobrowski's three questions asked how many nails were required for a roof shingle, to which Claimant responded that he did not know. (T 29, M 9) At the interview, Mr. Dobrowski offered that three (3) nails are required. (T 30) At the hearing, both Claimant and Mr. Dobrowski testified that three (3) nails was not the only possibility. (T 30, 167) The number of nails that are required depends on the type of shingle. (T 30, T 167-168) Mr. Dobrowski explained that such questions do not have a "direct, specific answer" because of the "many variables," but the intent was to "draw a conversation" for an applicant to explain that he understands that the answer is dependent on the variables. (T 168) Claimant testified, "It was kind of an open-ended question because there are several answers, there's just not one broad answer for that." (T 31) When asked at the hearing how many nails he used on each shingle on his own roof repair, Claimant stated, "I did what was already there. That's what a maintenance person does. I maintain the property, so I saw what was done on the other shingles, so I just repeated it." (T 51)

Mr. Dobrowski's final Code question was where a fire separation is required in a single family home. (M 9) Claimant responded that he did not know. (M 9) At the hearing, Mr. Dobrowski testified that for most single family homes, the only required fire separation is between the garage and the home. (T 174)

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Ms. Montey testified that at the end of the interview, she believed Claimant lacked knowledge of the building codes, but in all other respects met the minimum necessary qualifications of the position. (T 87-88) She declined to hire Claimant because of his lack of knowledge of the building codes. (T 90, 136) Ms. Montey had also declined to hire a member of the Mashantucket Pequot Tribe based on his failure to establish to the satisfaction of the interviewers that he was minimally qualified. (T 92) After Claimant's testimony at the hearing, Ms. Montey believed that Claimant also failed to meet the minimum necessary qualifications due to his lack of roofing experience. (T 98)

At the end of Claimant's interview, Mr. Dobrowski also assessed Claimant as having insufficient knowledge of the building code.⁴ (T 159) Mr. Dobrowski testified, believes "In order to oversee contractors, you need to know a lot about construction to make sure that they're doing it right and to protect the Tribe's interests." (T 160) When asked whether he believed an applicant's general knowledge of state and town building codes would translate into an ability to oversee contractors, Mr. Dobrowski responded, "More so...than not being familiar with the Codes." (T 180)

With respect to the experience reflected on Claimant's resume and application, Mr. Gardner testified that Claimant had "some recent experience in the commercial type application." (T 90) When asked whether he believed at the end of the interview that Claimant was minimally qualified, Mr. Gardner testified that "the only thing that stuck out was the Code issues...it seemed a hang up." (T 190) He cited Claimant's responses to the question about railing height and baluster spacing, as well as the fire separation question. (T 202-203) Mr. Gardner testified that he believed his own knowledge of the Building Codes, which he classified as "a little more than general [knowledge]" was "definitely" helpful in identifying construction problems, because "you've got to be familiar with what your're looking at to understand if it's correct." (T 189)

After the interview, the three interviewers discussed the applicant and agreed that he was not minimally qualified. (T 113, 135-136) The determination was summarized at the end of the interview notes as follow, "Everyone agreed that although Paul meets the minimum qualifications, he does not have the knowledge of building codes, as required per the position description." (M 9) Ms. Montey testified that the reference in the notes to Claimant being minimally qualified was a reference to his educational qualifications. (T 137, M 9)

Ms. Montey completed an interview rating sheet that was forwarded to Human Resources. (T 91, M 8) The entry for "Education" is marked "3" and states, "Paul meets minimum requirements." (M 8) The entry for "Personality" is marked "2" and states, "Paul came across as arrogant during the interview." (M 8) Ms. Montey testified that she felt Claimant was "arrogant" and "overconfident and condescending" during the interview, that "he was totally different from other interviews..." (T 88-89)

⁴ Mr. Dobrowski also believed Claimant did not meet the minimum requirements of the position based on Claimant's lack of knowledge in "construction, in general." (T 159) Respondent indicated that construction experience was not a minimum necessary qualification for the position, suggesting the possibility of an oversight. (T 179)

The entry for "Experience" is marked "2" with the comment, "Paul had experience with general repairs, but not in mold remediation and Building codes." (M 8) The entry for "Communication Skills" is marked "5" with the comment, "Paul was very quick to respond, but his answers were not always correct." (M 8) The entry in "Interviewer comments" reads, " Paul does not have the experience or knowledge to perform all aspects of the job." (M 8)

About December 11, 2015, Claimant received a call from Mr. Agnello, who informed him that Ms. Montey had said she would not hire Claimant because he was "arrogant, condescending, and too quick to respond." (T 37-38, M 1) Claimant was not told that he lacked sufficient knowledge of the building codes. (T 37-38, T 53)

During his testimony, Claimant was asked questions by Respondent's counsel that had been provided by Mr. Dobrowski and represented to be "10 general building code questions." (T 56,) None of the questions had been asked during the interview. (T 65) Claimant objected to the line of questioning. (T 57)

II. Analysis and Conclusions of Law

Jurisdiction over the parties and with respect to the Claim is undisputed and asserted. Claimant is a spouse of a Tribal member who is in good standing with the Tribe and was denied employment with the Tribe's Housing Department for the position of General Maintenance and Repair about December 11, 2015. The issue is whether Claimant met the minimum necessary qualifications of the position.

A. Preference Law

The Tribal Council has declared that "providing preference in employment opportunities to tribal members and their spouses furthers the important goal of preserving tribal families by promoting the economic well being of the tribal family and assuring that all family members can share in the benefits and responsibilities of tribal employment." 33 M.P.T.L. ch. 1 § 2(d). A purpose of the Preference Law is "[t]o clearly set forth the requirements for all Employers within the jurisdiction of the Tribe to provide preference in Employment Opportunities for Tribal Members, Spouses of Tribal Members and Native Americans who meet the Minimum Necessary Qualifications of the job." 33 M.P.T.L. ch. 1 § 3(a).

Section 5(a) of the Preference Law sets forth certain requirements imposed on the Tribe as an employer. The provision states, in part:

When the Tribe is the Employer, it shall give preference in Employment Opportunities first to Tribal Members, then to Spouses of Tribal Members, and then to other Native Americans; provided that the Tribal Member, Spouse of a Tribal Member or Native American, as the case may be, meets the Minimum Necessary Qualifications.

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33 M.P.T.L. ch. 1 § 5(a)

“Employment Opportunities” include hire. 33 M.P.T.L. ch. 1 § 4(c). In order to receive preference for an available position, an otherwise preference eligible applicant must be minimally qualified. The Preference Law defines Minimum Necessary Qualifications as follows:

“Minimum Necessary Qualifications” means those job-related qualifications that are essential to the performance of the basic responsibilities of each employment position, including any essential qualifications concerning education, technical skills, training or job related experience. Demonstrated ability to perform basic responsibilities shall be deemed satisfaction of essential qualifications.

33 M.P.T.L. ch. 1 § 4(h)

The MERO has previously found that “an employer is not required to hire a preference eligible individual who is not qualified to perform the basic responsibilities of the position. By the same token, an employer is not permitted to exclude preference eligible individuals by imposing qualification standards beyond those necessary to perform the basic responsibilities of a position.” *Jones v. Mashantucket Pequot Tribal Nation*, MERO Final Claim Determination, Case No. 2011-33012, at 11 (March 2, 2012), *affirmed*, *Jones v. Mashantucket Pequot Tribal Nation*, 6 Mash.App. 24, 33 (2014)

B. Minimum Necessary Qualifications of General Maintenance and Repair Position

To the extent a position posting does not fully capture the fundamental requirements of a position, the MERO has found that it is the *position description* that is instructive of the minimum necessary qualifications of a position. *Sebastian v. MGM Grand at Foxwoods*, MERO Case No. 2009-33003, at 3 (January 15, 2010) The General Maintenance and Repair position description reveals that the Housing Department’s requirements for the position and the applicant include the following:

- General knowledge of State and Town building codes
- Oversight and quality control of contractors of various disciplines in their performance of services at Tribal properties.
- General knowledge of and ability to perform repairs and routine maintenance at Tribal properties
- General knowledge of general construction

Although instructive, a position description is not necessarily determinative of the minimum necessary qualifications of a position. *Id.* For example, an employer may not include unnecessary requirements

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that exclude otherwise preference eligible applicants from consideration or heightened minimum requirements to create a barrier to preference applicants generally. The MERO considers whether the employer's requirements are reasonable under all the circumstances. *See, e.g., Jones v. MPGE*, MERO Case No. 2012-33017, at 10 (July 17, 2013)

There is no indication here that the minimum necessary qualifications were established in a manner that created a barrier to consideration of preference eligible applicants. Both a Tribal member and Claimant were initially deemed minimally qualified for the position of General Maintenance and Repair and advanced in the application process to an interview with the Department of Housing based on their application materials.⁵

a. Housing Department's Determination

Ms. Montey credibly testified that Claimant was considered minimally qualified in all respects except for his knowledge of the building codes. Her testimony was consistent with her view that knowledge of the codes was necessary for oversight of construction contractors. Ms. Montey's testimony was also consistent with the summary notation on the interview notes and entries on the interview rating sheet, and further supported by the testimony of Mr. Dobrowski and Mr. Gardner.

Similarly supported was Ms. Montey's testimony that she did not consider Claimant's demeanor in the interview to be a disqualifier. Her testimony is credited. The only reason Mr. Agnello gave Claimant for the denial of the position was that the Housing Director considered him "arrogant, condescending, and too quick to respond." Ms. Montey's testimony and interview ratings confirmed that she viewed Claimant's demeanor in the interview unfavorably. Nevertheless, the information available on the interview rating sheet that Ms. Montey forwarded to Human Resources was not limited to her view of Claimant's demeanor and focus on that singular issue does not accurately reflect the interview team's assessment or the Housing Department's basis for concluding that Claimant was not minimally qualified for the position.⁶

b. "General Knowledge" of Building Codes

The position posting and description characterize the required knowledge competencies as "general knowledge." Claimant urges a broad interpretation of the term "general knowledge," that which is "strongly associated with general intelligence, and with openness to experience." The Housing Department's use of the term in the position posting and description, however, may not be considered

⁵ As a result of the interview, the Tribal member applicant was not considered minimally qualified.

⁶ The interview rating sheet suggests one of the reasons Claimant was not considered minimally qualified was his lack of experience in mold remediation, but consistent with Ms. Montey's testimony that mold remediation experience was omitted as a requirement from the revised position description, the position description contains no such minimum requirement. The Record does not support a finding that mold remediation experience was relied upon in the Housing Department's determination.

in a vacuum, but rather must be considered in the context of the knowledge essential to perform the basic responsibilities of the Housing Department's General Maintenance and Repair position.

The record reveals two primary components to the General Maintenance and Repair position, contingent on whether the required work is performed directly by the General Maintenance and Repair employee or by outside contractors. First, the General Maintenance and Repair employee directly performs general household maintenance and repairs at various single family and duplex properties overseen by the Housing Department. Second, when the repair work exceeds what the General Maintenance and Repair employee would perform directly, the employee performs an evaluation of needed repairs, with the Housing Director defines a scope of work that is relied upon by Procurement for soliciting bids, and oversees the work of the contractor who is selected to perform the work.

The Housing Department applied a "general knowledge" standard that requires applicants to demonstrate that they have enough knowledge of the building code requirements to be able to discuss routinely encountered building code issues, particularly those related to safety. Due to his expertise in building codes, the Tribe's Building Official was asked to participate in the interviews and to develop questions relating to knowledge of the building codes that would be asked of each applicant. The three (3) questions related to roofing, railing height and baluster width, and fire stop location. All are undoubtedly common to home construction, with most homes having a shingled roof, an internal or external railing and often, an attached garage. Two of the questions are obviously safety related. The questions were intended to elicit either a direct response based on building code requirements or a response that would demonstrate that the applicant was sufficiently conversant with code requirements to know how to approach the issues raised by the question.

The standard applied by the Housing Department must be considered in the context of the other requirements of the position, particularly the requirements relating to construction oversight. Mr. Gardner, with years of experience in the construction industry and developed specialties within the industry, described his building code knowledge as being slightly above general knowledge. He testified to the importance of his building code knowledge in evaluating existing and required construction. Mr. Dobrowski's testimony also revealed his view of the importance of building code knowledge as one aspect of the broader construction knowledge that he considers necessary for the position. Under these circumstances where the General Maintenance and Repair employee would be required to be sufficiently familiar with the building codes to understand their implications for the oversight of contractors in addition to the performance of direct maintenance and repair work, it is reasonable for the Housing Department to impose a standard of "general knowledge" that requires applicants to demonstrate an ability to respond to commonly encountered building code questions in a manner that demonstrates sufficient familiarity with the codes to address the questions appropriately.

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c. Assessment of Claimant's Building Code Knowledge

It is undisputed that during the interview, the Claimant did not have answers for any of the three questions; specifically, to indicate the standard height of a railing and maximum spacing between balusters, to indicate how many nails are required for a roof shingle and to identify the location of a fire barrier in a single family home. Perhaps more importantly, Claimant did not offer any type of response that would lead the interviewers to believe that he was familiar with the requirements of the building codes.⁷ For example, he did not offer a potential range for the railing height, an approximate maximum width between balusters or identify the variables that may affect the number of nails used for a roof shingle.

Notwithstanding his responses to the code specific questions during the interview, Claimant asserted in his application cover letter and at the hearing that he possesses the requisite knowledge of the building codes. Considering his application materials, interview and hearing testimony overall, however, reveals that Claimant has not demonstrated the level of building code knowledge required for the General Maintenance and Repair position.

With three (3) years of maintenance and repair work experience, Claimant undoubtedly has experience in performing home repairs that the Housing Department position would be required to perform daily, including all those listed in the job description, with the possible exception of roofing.⁸ Nevertheless, his approach to the repair function, as was evident from his hearing testimony, reflects a lack of appreciation for potential building code issues. On several occasions, the Claimant pointed out that he is not a contractor; that he is a maintenance and repair technician, and he drew a bright line between construction and repair responsibilities. He expressed the view that initial construction would be performed in compliance with building codes so that any repairs would be performed in the same manner to achieve code compliance. Claimant's idealistic views may be shaped by his work experience. Claimant's description of the senior living facility, a 75 unit "very high end" apartment building owned and supported by a corporation that has multiple facilities, suggests an environment of standardization with respect to construction and repair work. In that environment, which Mr. Gardner described as "commercial," Claimant has performed many home maintenance and repair functions.

The Tribe's Housing Department operates in a very different environment than the senior living facility. For the Housing Department, standardization is the exception rather than the rule. The properties

⁷ No reliance has been placed on Claimant's responses, or lack thereof, to the "10 questions" at the hearing related to the building codes, to which he vehemently objected. The answers were not considered necessary to a determination and Claimant's responses were not considered reliable indicators of his knowledge.

⁸ Although the Housing Director testified that Claimant's admission at the hearing that he does not have roof repair experience would also have disqualified him from the position, given Claimant's hearing testimony regarding roofing, including his own roof repair, her assertion is questionable. The MERO finds it unnecessary to this determination to resolve the Housing Director's assertion.

overseen by the Housing Department are single family and duplex homes with varied construction, including some that do not meet building code requirements. With the Housing Department's limited staff, the General Maintenance and Repair position is singularly required to perform the maintenance and repair for approximately 111 properties. In order to perform repairs that are code compliant on homes that may not be code compliant, Claimant would, by definition, need to be able to identify when current construction is not code compliant, and could not afford to assume that the existing construction was performed in compliance with applicable building codes.

Similarly, in order to fulfill those aspects of the General Maintenance and Repair position related to the contracting of repair work, Claimant would be required to define the scope of work for purposes of soliciting bids, oversee the performance of the work on a regular basis and work with the applicable building inspector to make certain the entire project was in compliance with applicable building codes. In his testimony, Mr. Gardner gave two recent examples of home repairs he has overseen for the Housing Department, both of which had construction defects, one of which was so unusual he had never seen the issue previously in his more than 20 years working in the construction field. In one and possibly both home repair examples he discussed, the construction defect was identified by the Housing Department's representative. The projects described by Mr. Gardner exemplify the complexity of this oversight function and, given his short tenure supporting the Housing Department, the frequency with which issues of building code compliance may arise, further heightening the importance of the expectation that a minimally qualified applicant be conversant with the building codes.⁹ Claimant's experience is limited to the oversight of regularly retained contractors that he characterized as "professionals" who have never performed work that Claimant believed was not code compliant, providing no basis from which to conclude that he possesses the requisite building code knowledge.

As Claimant himself recognized in his application cover letter, the Housing Department operates in a financially stressed environment. The Housing Director made clear that she is not knowledgeable with respect to Building Code compliance issues and is dependent on the abilities of the employee holding the General Maintenance and Repair position. She must be able to trust that the General Maintenance and Repair position is held by someone who is capable of managing maintenance, repair and construction issues effectively so they do not result in unnecessary department expenditures or the additional work associated with disgruntled tenants or homeowners.

Based on all the circumstances, it was reasonable for the Housing Department to impose a "general knowledge" standard that required applicants to be able to respond directly to, or adequately discuss, several questions based on routinely encountered building code compliance issues. Claimant did not demonstrate the required proficiency with the building codes, because he did not offer correct responses or demonstrate the ability to discuss the code issues raised by the questions. Consideration

⁹ Identifying construction defects arguably requires construction knowledge beyond identifying issues of non-compliance with applicable building codes, reinforcing that the Housing Department's establishment of building code knowledge as a minimum necessary qualification is truly a minimum requirement.

of the Record in its entirety did not yield a different result. Claimant did not establish that he met the minimum necessary requirement of general knowledge of the building codes.

III. Disposition

For all the foregoing reasons, the Mashantucket Pequot Tribal Nation did not violate the Preference Law when it declined to hire Paul M. Reising for the position of General Maintenance and Repair with the Housing Department based on its assessment that Mr. Reising was not minimally qualified for the position. The Claim is hereby dismissed in its entirety.

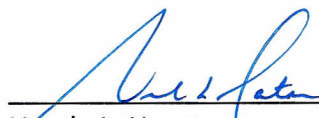
IV. Appeal Rights

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.

V. 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.

Dated this 25th day of April, 2016



Ursula L. Haerter
MERO Director

Final Claim Determination Case No. 2016-33042
April 25, 2016
MERO Form-33-1680
(12-30-13)