
UTAH LABOR COMMISSION

HARSHAD P. DESAI,

Petitioner,

vs.

PANGUITCH CITY CORP.,

Respondent.

**REVIEW OF ALJ'S DECISION
AND ORDER OF REMAND**

Case No. 8-05-0041

Harshad P. Desai asks the Utah Labor Commissioner to review Administrative Law Judge Luke's dismissal of his claim against Panguitch City Corp. ("Panguitch City") under the Utah Antidiscrimination Act, Title 34A, Chapter 5, Utah Code Annotated.

The Labor Commissioner exercises jurisdiction in this matter pursuant to § 63G-4-301 of the Utah Administrative Procedures Act and § 34A-5-107(11) of the Utah Antidiscrimination Act.

ISSUE PRESENTED

Mr. Desai filed a complaint with the Utah Antidiscrimination and Labor Division ("UALD") alleging that Panguitch City discriminated against him based on his religion, gender, national origin, and color when he was not hired for the position of executive director for Panguitch Main Street Organization ("Organization") in July of 2004. After an investigation, UALD dismissed his claim. Mr. Desai then requested a trial de novo with the Adjudication Division, as permitted under the Utah Antidiscrimination Act.

Judge Luke conducted an evidentiary hearing on the matter and found that Panguitch City did not exert control or supervision over the executive director position, the hiring for the position, or over the Organization's budget. Judge Luke concluded that Panguitch City was not the "employer" under the facts of the case and dismissed Mr. Dasai's claim against Panguitch City for lack of jurisdiction.

In his motion for review, Mr. Desai contends that Panguitch City and the Organization's operations are so entwined that they constitute an integrated enterprise, together comprising 15 or more employees for jurisdictional purposes. In the alternative, he argues Panguitch City is properly named as a joint employer because the City had control of hiring, payroll, and day to day activities of the executive director, the position for which he applied.¹

FINDINGS OF FACT

¹ The Commissioner notes that because she finds that the two entities are an "integrated enterprise," it is unnecessary to review whether, alternatively, Panguitch City was a joint employer.

ORDER OF REMAND
HARSHAD P. DESAI
PAGE 2

The Commissioner adopts Judge Luke's findings of fact to the extent they are consistent to this decision. The facts relevant to the motion for review, as supplemented by the record, can be summarized as follows:

The Organization is a nonprofit corporation that, at the time of Mr. Dasai's application for the executive director position in July of 2004, was operated by an eleven-member volunteer board of citizens. Panguitch City provides annual donations for the operation of the Organization. The only paid position in the Organization has been the executive director position. The hiring committee that conducted the interviews for the open executive director position in July of 2004 included members from both the Organization and Panguitch City.² The interviews were conducted at the city office. Following the interviews, the Organization recommended a candidate to the Panguitch City Council, which was approved following a motion and a vote by the council. (See Panguitch City Council Minutes, July 27, 2004.) In a letter to the UALD dated December 21, 2004, the Panguitch City's attorney admitted that:

When Main Street was first organized, Panguitch City provided an annual donation for the first year or so to help it get off the ground. The money was used to hire the first few managers. Later on, Panguitch City and Main Street, agreed that rather than donate money to the organization, it would be easier for both organizations if the City included the Main Street Manager on the City's payroll **as a city employee.**" (Emphasis added.)

Although the Organization conducts separate public meetings, members of the Organization's board then report the agenda discussed to the City Council at its meetings. The City Council also discussed and approved any salary increases for the executive director by vote. (See Panguitch City Council Minutes, October 12, 2004.) Further discussion at the City Council meeting on October 12, 2004, indicated that the Organization was not a separate entity and that perhaps it should become a separate entity, therefore permitting the Organization to set the wages and bonuses for the director instead of requiring the City's approval. Although the purpose of creating the Organization was to promote economic development by organizing and sponsoring community events, such as the annual hot air balloon festival, the City Council continued to maintain control over the planning and organization of these events. (See Panguitch City Council Minutes, July 27, 2004.)

In a letter to Mr. Dasai, dated November 1, 2001, the state coordinator of the Utah Main Street Program, which previously had provided funding to the Organization and contributes ongoing training and technical assistance to the Organization, commented that "Panguitch Main Street is not an independent organization but is controlled by Panguitch City."

² According to Mr. Dasai's and the City attorney's representations, there were four to five people present during his interview, two of whom were City representatives, including the mayor.

DISCUSSION AND CONCLUSION OF LAW

The threshold issued in this case is whether Panguitch City and the Organization operated as an integrated enterprise and should therefore be considered as a single employer. Section 34A-5-102 of the Utah Antidiscrimination Act provides “an employee means any person applying with or employed by an employer” and an “employer means . . . a person employing 15 or more employees within the state for each working day in each of 20 calendar weeks or more in the current or preceding calendar year.”

The federal courts, in considering whether two nominally separate entities constitute an “integrated enterprise” or a single employer, weigh four factors. Those factors are: (1) the degree of interrelations between the operations; (2) the degree to which the entities share common management; (3) centralized control of labor relations; and (4) the degree of common ownership or financial control over the entities. See Sandoval v. City of Boulder, Colorado, 388 F.3d 1312 (10th Cir. 2004). The court in Sandoval further noted that in applying this test, most courts rely primarily on the third factor and “the extent of control an entity has over employment decision making.”

Under the facts of this case, the Commissioner finds that all four factors are present in analyzing the relationship between the Organization and Panguitch City. Most notable of all, under the third factor of showing centralized control over labor relations, the facts show that the City was involved in not only interviewing the potential candidates, but also giving the final approval of the recommended candidate by vote of the council, then placing the candidate on its payroll **as a city employee**, and determining the salary and later pay increases for the position.

The Commissioner finds that Panguitch City exercises a sufficient level of control and direction over the Organization for both to be considered one employer—or an integrated enterprise—and that the City, with 15 or more employees, was properly named as an employer under Mr. Desai’s claim of discrimination. The Commissioner hereby sets aside Judge Luke’s decision dismissing Panguitch City for lack of jurisdiction and remands the matter to Judge Luke for further adjudicative proceedings as she deems necessary to determine whether Mr. Desai was discriminated against as alleged in his claim.³

[Intentionally Left Blank]

³ The Commissioner notes that, after reviewing the hearing record, there may be problems with the hearing recording necessitating additional proceedings to complete the hearing record.

**ORDER OF REMAND
HARSHAD P. DESAI
PAGE 4**

ORDER

The Commissioner sets aside Judge Luke's order of January 27, 2009, and remands this matter to the Adjudication Division for further proceedings consistent with this decision. It is so ordered.

Dated this 30th day of April, 2009.

Sherrie Hayashi
Utah Labor Commissioner

NOTICE OF APPEAL RIGHTS

Any party may ask the Labor Commissioner to reconsider this Order. Any such request for reconsideration must be received by the Labor Commissioner within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.

**ORDER OF REMAND
HARSHAD P. DESAI
PAGE 5**

CERTIFICATE OF MAILING

I certify that a copy of the foregoing Order of Remand in the matter of Harshad P Desai, Case No 8050041 , was mailed first class postage prepaid this ____day of April, 2009, to the following:

Harshad P. Desai
699 N Main St Box 150
Panguitch UT 84759

Panguitch City Corp.
Janet Oldham
Box 75
Panguitch UT 84759

David L. Church, Esq.
5995 S Redwood Rd
Salt Lake City UT 84123

Barry Huntington, Esq.
55 S Main St
Box 77
Panguitch UT 84759

and by Interdepartmental Mail to:

HEATHER MORRISON, DIRECTOR
UTAH ANTIDISCRIMINATION AND LABOR DIVISION

Sara Danielson
Utah Labor Commission