
UTAH LABOR COMMISSION

HARSHAD P. DESAI,

Petitioner,

vs.

**PANGUITCH MAIN STREET
ORGANIZATION,**

Respondent.

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

Case No. 8-05-0042

Harshad P. Desai asks the Utah Labor Commissioner to review Administrative Law Judge Luke's dismissal of his claim against Panguitch Main Street Organization ("Organization") 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 the Organization discriminated against him based on his religion, gender, national origin, and color when he was not hired for the position of executive director in July 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 and found that the Organization did not employ 15 or more employees as required for jurisdiction under the Utah Antidiscrimination Act. Therefore she dismissed Mr. Dasai's claim against the Organization.

In his motion for review, Mr. Desai contends that the Organization's and Panguitch City's operations are so entwined they constitute an integrated enterprise. Therefore he argues the Commission has jurisdiction over his claim against the Organization because, together, Panguitch City and the Organization have more than 15 employees.

FINDINGS OF FACT

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:

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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 executive director position included members from both the Organization and Panguitch City.¹ 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."

DISCUSSION AND CONCLUSION OF LAW

The threshold issue in this case is whether the Organization and Panguitch City operated as an integrated enterprise and should therefore both be considered a single employer. Section 34A-5-

¹ According to Mr. Desai'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.

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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 weigh four factors in considering whether two nominally separate entities constitute an “integrated enterprise” or a single employer. 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. Therefore, the Organization, together with Panguitch City, does have 15 or more employees and was properly named as an employer under Mr. Desai’s claim of discrimination. The Commissioner hereby sets aside Judge Luke’s decision dismissing the Organization 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.²

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² 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.

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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.

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CERTIFICATE OF MAILING

I certify that a copy of the foregoing Order Of Remand in the matter of Harshad P. Desai, Case No 8050042 , was mailed first class postage prepaid this ____day of April, 2009, to the following:

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and by Interdepartmental Mail to:

HEATHER MORRISON, DIRECTOR
UTAH ANTIDISCRIMINATION AND LABOR DIVISION

Sara Danielson
Utah Labor Commission