

Oneida Tribal Judicial System

Onayote ? a-ka Tsi? Shakotiya? Tolé hte

Trial Court

Vince Delarosa,
Petitioner

Docket No. 08-TC-090

v.

Date: July 11, 2008

Oneida Election Board,
Respondent

MOTION FOR INJUNCTION

This case has come before the Oneida Tribal Judicial System, Trial Court. Judicial Officers, Stanley R. Webster, Sandra Skenadore, Jean M. Webster presiding.

I Background

Petitioner Vince Delarosa filed a motion for an injunction against Respondent Oneida Election Board. Petitioner claims Respondent violated the Oneida Election Law regarding transportation of ballots, asserting that only two Election Board officials accompanied the Police Officer in transporting the ballots from the election site to the counting site and back to the election site, when the Oneida Election Law requires three election officials to be present. The Petitioner seeks a temporary restraining order under the Oneida Judicial Code Rule 31(B)1(a) against respondent Oneida Election Board from certifying the results of the 2008 Election Vice-Chairperson category. Petitioner also requests a special election for the top two candidates be held within 30 days.

II Issue

Does the petition for injunctive relief meet the requirements under Rule 31B(a) of the Oneida Rules of Civil procedure, for the granting of a temporary restraining order?

III Analysis

Petitioner claims that the Respondent violated the Oneida Election Law on July 5, 2008, specifically:

Section 2.9-2 the ballots shall be secured in a sealed container for transportation to the ballot counting location if necessary. The sealed ballots shall be transported by an Oneida Police Officer with at least three (3) of the Election Officials for counting/tallying of ballots.

According to the Petitioner, on July 5, 2008 only two Election Officials accompanied the Oneida Police Officer and Records Technician to the Norbert Hill Center to count ballots. Section 2.9-2 addresses transporting ballots in a sealed container from the counting location *with at least (3) election officials*. Petitioner fails to identify how the transporting of ballots in a sealed container by one police officer and (2) election officials harms the Petitioner. Petitioner does not explain how this action only impacts the final outcome in the Vice-Chairperson category. Petitioner goes on to explain that “there is only a five vote difference between the top two candidates”, asking for special consideration for only the Vice-Chairperson category “because the likelihood of harm to his interests is greatest of all candidates, with a difference of only two tenths of one percent out of 903 voters, a virtual tie.” Virtual according to the Webster Collegiate Dictionary is defined as:

“Being in such an essence or effect though not formally recognized”

It is difficult for this court to accept the Petitioner’s claim of a virtual tie. This court understands the term “tie” to mean equal in number. Petitioner fails to show that a tie exists, therefore Petitioner’s request for a Special Run-Off Election will not be considered.

The Petitioner asked the court to enjoin the Respondent from certifying the results of the 2008 Oneida Election for only the Vice-Chair category. In the Oneida Tribal Judicial System, Rules of Civil Procedure, Rule 31(B) 1(a) reads:

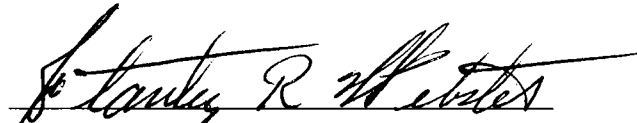
“No temporary restraining order shall be granted without notice to the adverse party unless, (a) It clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon.”


Petitioner fails to persuade this Court that the transportation of ballots by one police officer and (2) election officials caused the Petitioner immediate or irreparable harm or injury or the loss or damage.

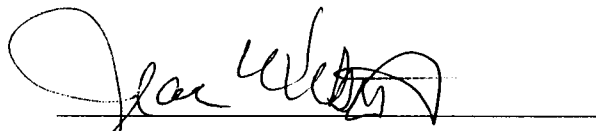
IV Decision

The motion for an injunction is hereby denied.

By the authority vested in the Oneida Appeals Commission pursuant to Resolution 8-19-91-A of the General Tribal Council it is so held on this 11 day of June, in the matter of Vince Delarosa vs. Oneida Election Board, Docket No. O8-TC-090.


Stanley Webster, Lead Judicial Officer


Sandra Skenadore, Judicial Officer


Jean Webster, Judicial Officer