
**ONEIDA JUDICIARY
TRIAL COURT**

**Debra L. Powless,
Petitioner**

v.

Case No: 17-TC-044

**Oneida Election Board
Respondent**

ORDER

This case has come before the Oneida Trial Court, Honorable Layatalati Hill presiding.

Appearing in person: Petitioner Debra L. Powless and Respondent represented by Racquel L. Hill with Attorney Michelle L. Gordon and Attorney Kelly M. McAndrews.

Appearing as witness: Racquel L. Hill and Everett Blackthunder.

Background

On July 17, 2017 the Petitioner filed a civil complaint challenging the Oneida Election held on July 8, 2017. The Petitioner named the Oneida Election Board and the Oneida Tribal Secretary's Office as Respondents. On July 19, 2017 Attorney McAndrews filed on behalf of the Oneida Law Office Notice of Representation for the Oneida Tribal Secretary's Office and Attorney Gordon on behalf of the election board. Also, on July 19, 2017 the Attorneys for both the Oneida Tribal Secretary's Office and Election Board filed motions to dismiss. The Oneida Tribal Secretary's Office's motion was heard and decided during the hearing and is addressed in this decision. The Court reserved the right to rule on the Election Board's motion to dismiss until after the hearing and is addressed in this decision. A hearing was held on July 20, 2017 at 10:00 a.m.

Statement of the Case

The Petitioner sued the Respondents based on her allegations of an election that was not transparent because it lacked reporting of spoiled and rejected ballots as well as issues surrounding the maintenance of the AccuVote Tabulator Machine used during the election.

Issues

1. Is the Oneida Tribal Secretary's Office a proper party to this action? (Oneida Tribal Secretary's Office's motion to dismiss)
2. Are spoiled ballots required to be reported in the tentative results and if so, but for the non-reporting of spoiled ballots in the tentative results postings, would the outcome of the election have been different?
3. Are rejected ballots required to be reported in the tentative results and if so, but for the non-reporting of rejected ballots in the tentative results postings, would the outcome of the election have been different?
4. Is the AccuVote Tabulator Machine required to be maintained based on the election law and if so, but for the lack of maintenance of the machine, would the outcome of the election have been different?
5. Did the Petitioner fail to state a claim upon which relief can be granted? (Election Board's motion to dismiss)

Findings of Fact

The Court finds as follows:

1. The Court has subject matter, personal and territorial jurisdiction over this matter.
2. Notice was given to all those entitled to notice.
3. The Oneida General Election was held on Saturday, July 8, 2017.
4. The numbers regarding spoiled ballots during this election were not reported in the tentative results, but are not required to be reported in tentative results.
5. The numbers regarding rejected ballots during this election were not reported in the tentative results, but are not required to be reported in tentative results.
6. There was not a machine to count ballots in Milwaukee, but one is not required.
7. There was a grammatical error in reporting the tentative results, but it did not result in a change in the election.

8. The voting machine is not required to be served and maintained based on the Election Law.

Principles of Law

1. **102.11-11.** Any qualified voter may challenge the results of an election by filing a complaint with the Judiciary within ten (10) calendar days after the election. The Judiciary shall hear and decide a challenge to any election within two (2) business days after the challenge is filed. Any appeal to the appellate body of the Judiciary shall be filed within one (1) business day after the issuance of the lower body's decision and decided within two (2) business days after the appeal is filed.

(a) The person challenging the election results shall prove by clear and convincing evidence that the Election Law was violated or an unfair election was conducted, *and that the outcome of the election would have been different but for the violation* (emphasis added).

2. **102.9 Section C: Spoiled Ballots**

102.9-10. If a voter spoils his/her ballot, he/she shall be given a new ballot.

102.9-11. The spoiled ballot shall be marked "VOID" and initialed by two (2) Election Officials and placed in an envelope marked as "Spoiled Ballots."

102.9-12. The Spoiled Ballot envelopes shall be retained and secured for no less than fifteen (15) calendar days following finalization of any challenge of the election, at the Records Management Department.

3. **Section D. Rejected Ballots**

102.9-13. Rejected Ballots are to be placed in a specially marked container and sealed.

(a) Computer rejected ballots shall be reviewed by the Election Officials to verify the authenticity of the ballot. Ballots rejected because of mutilation shall be added to the final computer total, provided that, a new ballot was not received as set out in sections 102.9-10 through 102.9-12.

(b) Ballots rejected, either during the computer process or during a manual counting, shall be reviewed by the Election Officials to verify that they are authentic. If the Election Officials determine that the ballot is not an official ballot, or that it is an illegal ballot, the ballot shall be designated 'void,' and placed in a sealed container marked "Void Ballots."

4. **102.11. Election Outcome and Ties**

Section A. Election Results Announcement

102.11-1. The tentative results of an election shall be announced and posted by the Election Board within twenty-four (24) hours after the closing of the polls. Notices of election results shall contain the following statement:

"The election results posted here are tentative results. Final election results are forwarded by the Oneida Election Board to the Oneida Business Committee via a Final Report after time has lapsed for recount requests, or challenges or after all recounts or challenges have been completed, whichever is longer"

102.11-2. The Election Board shall post, in the prominent locations, and publish in the Nation's newspaper, the tentative results of an election.

5. **102.11-12. The Final Report.** The Election Board shall forward a Final Report to the Nation's Secretary after time has lapsed for recount requests, or challenges or after all recounts or challenges have been completed, whichever is longer. The Final Report shall consist of the following information:

- (a) Total number of persons voting.
- (b) Total votes cast for each candidate by subsection of the ballot.
- (c) List of any ties and final results of those ties, including the method of resolution.
- (d) List of candidates elected and position elected to.
- (e) Number of spoiled ballots.
- (f) Cost of the election, including the compensation paid to each Election Board member.

6. **803.9-2(a)(6)**

(a) Every defense to a claim for relief in any pleading shall be asserted in the responsive pleading if one is required, except those listed below. If a responsive pleading is not required, any defense may be asserted at hearing. A party may assert the following defenses by motion:

- (6) Failure to state a claim upon which relief can be granted;

Analysis

1. Oneida Tribal Secretary's office as a party

The Petitioner named the Oneida Tribal Secretary's Office as a respondent. The Petitioner in neither the Complaint or at the hearing, allege any wrong doing or claims against the Oneida

Tribal Secretary's Office. Therefore, the Oneida Tribal Secretary's Office is not a proper party.

2. Spoiled Ballots

The Petitioner claims there was no reporting of the number of spoiled ballots in the tentative results postings, but offers no support that the failure to report would have changed the outcome of the election as required in section 102.11-11 (a). Instead, the Petitioner states that she would like to have those numbers reported in the tentative results. However, the Election Board is not required to report these numbers in the tentative results based on the Election Law. All that is required for posting of tentative results is to be announced and posted in prominent locations, and published in the Nation's newspaper by the Election Board within twenty-four (24) hours after the closing of the polls. The posting must include the following language, "The election results posted here are tentative results. Final election results are forwarded by the Oneida Election Board to the Oneida Business Committee via a Final Report after time has lapsed for recount requests, or challenges or after all recounts or challenges have been completed, whichever is longer." (see 102.11 Section A). Spoiled ballots are only required to be reported in the final report (see 102.11-12(e)). Therefore, the Petitioner is not entitled to the spoiled ballot numbers until the final report is submitted.

3. Rejected Ballots

The Petitioner claims there was no reporting of the number of rejected ballots in the tentative results postings, but offers no support that the failure to report would have changed the outcome of the election as required in section 102.11-11 (a). Instead, the Petitioner states that she would like to have those numbers reported in the tentative results. However, the Election Board is not required to report these numbers in the tentative results based on the Election Law. Section 102.9-13 (a) and (b) addresses how rejected ballots are to be handled but makes no mention of reporting rejected ballots. Section 102.11-12 also does not state rejected ballots are to be reported in the final report. Nowhere in the Election Law does it state that rejected ballots are to be reported in either tentative results or in the final report. Therefore, the Petitioner is not entitled to the rejected ballot numbers based on the Election Law.

4. AccuVote Tabulator Machine

The Petitioner claims the AccuVote Tabulator Machine (voting machine) has not been properly maintained or serviced. The Election Board Chairperson, Racquel L. Hill, testified that she did not know when the last time it was serviced. However, the Petitioner could not point to a specific area

of the Election Law that would require the voting machine to be maintained or serviced, although it would seem logical for the voting machine to be kept in working order and up to date. However, the Petitioner did not prove the voting machine was out of date, but even if she had, it is still not required under the Election Law as a basis for challenging this or any Oneida election. Therefore, the Petitioner is not entitled to a new election based on the alleged lack of maintenance and service on the AccuVote Tabulator Machine.

5. Failure to state a claim upon which relieve can be granted

The Petitioner makes the claims as stated above, but failed to prove by clear and convincing evidence that the Election Law was violated or an unfair election was conducted, and that the outcome of the election would have been different but for the violation. Therefore, the Respondent's motion to dismiss for failure to state a claim upon which relief can be granted must be granted.

Conclusions of Law

1. The Oneida Tribal Secretary's Office is not a proper party to this action.
2. Spoiled ballots are not required to be reported in the tentative results.
3. Rejected ballots are not required to be reported in the tentative results.
4. The AccuVote Tabulator Machine is not required to be maintained or serviced based on the Election Law.
1. The Petitioner failed to state a claim upon which relief can be granted.

Order

The court enters the following order:

1. The Respondent's motion to dismiss the Oneida Tribal Secretary's Office from this case and correct the caption of this case to reflect that is granted. The Caption shall read "Debra L. Powless v. Oneida Election Board"
2. The Respondent's motion to dismiss this case on behave of the Election Board is granted.

IT IS SO ORDERED.

By the authority vested in the Oneida Trial Court pursuant to Resolution 01-07-13-B of the General Tribal Council an order signed on July 20, 2017 in the matter of *Debra L. Powless v. Oneida Election Board*.
Case #16-TC-044.

Layatalati Hill, Trial Court Judge