
Appellate Court

Amelia Cornelius, Shirley Hill,
Appellants

Docket No. 03-AC-033

vs.

Oneida Election Board,
Respondent

Date: March 31, 2004

Final Decision

This case has come before the Oneida Appeals Commission. Judicial Officers Winnifred L. Thomas, Richard Ackley, Mark Butterfield, Pearl House, Sandra Skenadore, presiding.

I. Background

This appeal stems from a decision by the Oneida Appeals Commission Trial Court issued on November 24, 2003, under Docket Number 03-TC-337. That decision dismissed the Appellants' case. The Appellants originally challenged the legitimacy of a special election held on September 27, 2003 for two positions on the Oneida Gaming Commission.

A general election was held in July 26, 2003. The Appellants were candidates for the Oneida Gaming Commission, and received the highest number of votes for the two open positions on the Gaming Commission. However, the Oneida Election Board failed to include a legitimate candidate on the ballot for the Gaming Commission. That candidate was Mr. Gary G. Metoxen. Mr. Metoxen filed a challenge to the July election on August 1, 2004, under Docket Number 03-TC-326. After a hearing on Mr. Metoxen's Complaint, a special election for the two positions on the Gaming Commission was ordered, with Mr. Metoxen's name to be placed on the ballot. That special election took place on September 27, 2003.

The Appellants were on the ballot for the special election, but did not receive the highest vote totals this time. Two others, Ms. Linda Dallas, and Mr. Gary Jordan, were nominally elected to the open positions for the Gaming Commission. The Appellants filed for injunctive relief against the certification of the special election results. Their Complaint was ultimately dismissed by the Trial Court on November 24, 2003. The Notice of Appeal was filed on December 12, 2003.

The Trial Court decision dismissed the Appellants' claims. The Trial Court found that the Appellants had the opportunity to contest the occurrence of the special election before the special election took place. The Appellants could have appealed or contested the Trial Court decision under Docket 03-TC-326, or could have challenged the special election before it took place, but did not. The Trial Court additionally found that the special election was agreed to by the parties in that case, the Election Board and Mr. Metoxen, and was therefore appropriate and authorized under the circumstances of Mr. Metoxen's case. Finally, the Trial Court dismissed the case because it found the matter to be untimely and that the Appellants had sufficient opportunity as

candidates to prevail in the special election or to attempt to prevent it from happening.

The Appellants first ask for the general recusal of current Appeals Commission judicial officers, arguing that as members of the voting public, the judicial officers may have voted against the Appellants at one or both of the elections and therefore might be biased or otherwise have an interest in preventing the Appellants from taking office.

The Appellants additionally argue that a conflict of interest exists or is perceived to exist with respect to the Appeals Commission judicial officers sitting on this case because all eleven seats for the Appeals Commission were open and part of the general election in July of 2003. The Appellants argue that any special election should have included all open seats from the general election and that the Appeals Commission Trial Court in Metoxen vs. Election Board, Docket 03-TC-326, exhibited bias and a conflict of interest by limiting the special election to only the Gaming Commission positions.

The Appellants argue that the Trial Court decision is clearly erroneous because Oneida Law does not authorize a special election as ordered by the Court in Metoxen. No provision within the Election Law authorizes a special election due to ballot error on the part of the Election Board, and the Appellants therefore argue that such a special election is not an authorized remedy.

The Appellants further argue that the Trial Court decision is erroneous because it found that the special election was the only remedy available. The Appellants suggest other remedies not considered by the Trial Court and therefore argue that the decision is erroneous because these other hypothetical remedies were not considered.

Finally, the Appellants argue that the Trial Court's decision was outside the scope of its authority. The Appellants argue that the special election amounted to a creation of a remedy under the law, and that amendments to the Election Law may only be made pursuant to Business Committee and/or General Tribal Council approval. Without such approval, the Appellants argue that the special election "amendment" to the Election Law was not authorized and outside of the scope of the Trial Court's authority to create.

II. Issues

1. Did the Appellants properly request recusal of full Appeals Commission in general, and individual judicial officers specifically?
2. Was the Trial Court decision arbitrary and/or capricious?
3. Was decision of Trial Court clearly erroneous in finding that a special election was appropriate?
4. Was the special election erroneously limited to that of the Gaming Commission, as opposed to all boards, committees, or commissions that were on the original ballot for July 26, 2003?
5. Was the Trial Court acting outside the scope of its authority in ordering the special election?

III. Analysis

1. Should Recusals be Granted?

The Appellants asked for the general recusal of the full Appeals Commission and the use of outside judges in the handling of this dispute. As a matter of general principle, this motion is denied. Recusal is appropriate when there is a direct conflict of interest for a judicial officer to hear a matter, or when a reasonable perception of such a conflict exists. The Appellants' initial request that the full Appeals Commission be recused does not meet either of these criteria. The primary reason presented for a general recusal is the voting rights of the judicial officers. The Appellants offer the theory that judicial officers might have voted for other candidates or might themselves have a personal interest in preventing the Appellants from taking office. This justification for recusal is without merit. To force each Judicial Officer to be recused in any election case where they are a voter would be to penalize a Judicial Officer's right to vote like every other Oneida. The Appeals Commission is reluctant to take such a drastic measure based on the mere fact that a Judicial Officer has a right to vote. To require a Judicial Officer's recusal, the moving party must demonstrate a more concrete showing of bias, partiality, or unfairness than the claimants have in this case.

If the ability to vote in an election were found to be evidence of an interest in the outcome of the election, then the Appeals Commission would never be able to hear a case involving an election controversy. This clearly is contrary to the existing Election Law and undermines general principles of Oneida inherent sovereignty. Elections are a fundamental part of the democratic process for the Oneida Government. As such, to the greatest extent possible, disputes arising as a result of an election controversy should be handled within the Oneida judiciary. Oneida has the sovereign authority to handle disputes in its own forum. Oneida Appeals Commission Judicial Officers know and accept the responsibility of treating all cases with objectivity and with the purpose of honestly upholding the laws of the Oneida Nation. Even if this could reasonably be called into question, the doctrine of necessity would justify a denial of a recusal request on these grounds.

The doctrine of necessity establishes the principle that judges must sit on a case even where some inherent conflict may exist because there is no one else to act in that capacity. It is of primary importance that Oneida be able to resolve disputes internally with its own forum and its own judges. The Appellants' argument that the full Commission be recused on grounds they may have exercised their rights as voters would undermine the inherent ability of Oneida to function as a sovereign with an autonomous judiciary. To the greatest extent possible, the Appeals Commission will act to ensure unbiased and impartial review of cases before it. And to the greatest extent possible, this review should be done by Oneidas elected by the Oneida populace to serve in this capacity.

The Appellants have also filed requests for recusal for several individual Appeals Commission Judicial Officers. Some of these requests have been granted, and each recusal is noted in the

record. However, two individual requests for recusal are hereby denied. The first is for Judicial Officer Winnifred L. Thomas. The second is for Judicial Officer Pearl House.

The Appellants sought a recusal of Judicial Officer Thomas on the grounds that Judicial Officer Thomas wrote a dissenting opinion in a prior case that would have adversely affected Appellant Amelia Cornelius. This is not evidence of bias, nor is it evidence of a conflict of interest. The mere appearance before a Judicial Officer who has, or would have, ruled against a party, is not evidence of bias justifying recusal. Absent some explicit evidence of bias or prejudicial statements, there is no reason for recusal. In addition, the prior case had no issues related or remotely connected to the case at hand. There is no overlap of issues or question of bias on the part of Judicial Officer Thomas. The request that Judicial Officer Thomas be recused is therefore denied.

The Appellants asked that Judicial Officer House be recused because of her prior involvement on the Trial Court that originally ordered a special election take place on August 8, 2003. However, the Appellants' case is an appeal of a Trial Court decision in November 2003. There is no direct appeal of the decision which Judicial Officer House was a part of, and the Appellants' collateral attack upon the merits of that decision is not sufficient grounds for recusal. The request that Judicial Officer House be recused is therefore denied.

2. Was the Trial Court Decision Arbitrary?

The essential standard of review as to whether a decision is arbitrary and/or capricious is whether a conclusion has been entered without rationale analysis or is manifestly unreasonable. As a matter of course, the conclusions of the Trial Court from its November decision are clearly and logically linked to the existing laws and the facts as found by the Trial Court. The essence of the Trial Court analysis was based upon the finding that the Appellants knew that Gary G. Metoxen had challenged the July 26, 2003 election results, and knew that a special election had been scheduled as a result of that challenge. However, the Appellants chose to wait until after the results of the election before issuing their own challenge to the legitimacy of having a special election. The Trial Court made this finding of fact with respect to what the Appellants knew and how they acted. There is no evidence or argument that these findings of fact are erroneous. Findings of fact are given deference in that they will only be disturbed if the findings are clearly unsupported by the evidence presented and could not have been reasonably reached.²¹ This is not the case here.

²¹

See Oneida Compliance Division vs. Metoxen, Cathy, 6 O.N.R. 3-32, 33 (99-EP-0051, 4/4/00) Findings of fact are owed deference, which means that when such findings are supported by the evidence presented they will be affirmed Findings of fact are reversed only when the appellate court is convinced upon a review of the record that the finding was not reasonable and a clear mistake has been made and Division of Land Management vs. Jourdan, Jeremy, 3 O.N.R. 3-34, 36 (97-EP-0003, 4/4/97) Findings of fact made by an original hearing body are owed deference by the appellate body.

After finding that the Appellants had an opportunity to directly challenge or otherwise contest the other Trial Court's decision from August 7, 2003 under Docket 03-TC-326, the Trial Court found that the Appellants had missed their opportunity to challenge whether a special election could take place. That is a reasoned analysis based on the facts and law argued before it, and the decision therefore cannot be found to be arbitrary.

3. Did the Trial Court Erroneously Order that a Special Election Take Place?

The Appellants' case on appeal is in fact a collateral attack upon the decision entered by the Trial Court on August 7, 2003 under Docket Number 03-TC-326 (Election Appeal I). For that reason, this Appellate Court will not directly address the merits of whether a special election was appropriately ordered. The appeal at hand stems from the decision of the Trial Court under Docket Number 03-TC-337 (Election Appeal II). As stated above under the section regarding whether the decision was arbitrary, the Trial Court in Election Appeal II found that the Appellants could not appropriately challenge the ruling of the Trial Court in Election Appeal I because their appeal was not timely. It is that finding from Election Appeal II that this court will review.

The Trial Court in Election Appeal II found that notice of the original challenge to the July 26, 2003 election was depicted in the Oneida Tribal newspaper, the *Kalihwisaks*. The decision of the Trial Court in that challenge ordered that a special election take place for the open positions on the Gaming Commission. The Appellants were not certified as the winners in that original election, because Mr. Metoxen filed a timely challenge to the election and certification of the Gaming Commission election results was stayed pending a decision in his case. That decision on August 7, 2003 ordered the special election as a result of an agreed to remedy by the parties. The Appellants were aware of all of this. Notice of the special election was made and the special election held on September 27, 2003. The Appellants were once again candidates on the ballot for this election, and did not at any time challenge the legitimacy of the election or the names on the ballot for the election.

The Appellants did not raise any challenge to the special election until after the special election took place and two candidates other than the Appellants received the highest vote totals. All of the arguments presented before the Trial Court in Election Appeal II were in fact arguments that would have been more appropriately presented in Election Appeal I. It was the decision of Election Appeal II that the Appellants' challenge was untimely.

The Appellants have not persuaded this Appellate Court that the Trial Court's decision was erroneous. The Appellants argue that their challenge was timely under provisions of the Oneida Administrative Procedures Act. However, they are incorrect. This Court finds no error with the conclusion that the proper way to have challenged the legitimacy of the special election would have been through joinder as interested parties to Gary G. Metoxen's original challenge, or as an appeal of the Trial Court decision in Election Appeal I. The decision from Election Appeal I was issued on August 7, 2003. At most, under the provisions of the OAPA, a party has thirty

business days to file a complete appellant's brief in order to appeal an original hearing body decision.²² Giving the Appellants the greatest benefit of the doubt with respect to time lines, the Appellants' challenge to the September special election should have been filed as an appeal no later than September 17, 2003. The Appellants' challenge to the legitimacy of the special election was untimely, and the finding that it was untimely by the Trial Court is not erroneous.

The Appellants argue that the Trial Court decision is erroneous because it did not consider all possible hypothetical remedies, and found that a special election was the "only" available remedy. The only remedy being reviewed by the Trial Court under Docket Number 03-TC-337 was that of a special election. The Appellants did propose an alternative remedy that the special election ballot be limited to a run off between the Appellants and Mr. Metoxen. However, that remedy was addressed by the finding that the Appellants were improperly and untimely challenging another Trial Court decision. Other hypothetical remedial schemes presented by the Appellants on this appeal will not be considered. They were not considered by the Trial Court and parties may not generally raise issues on appeal that were not raised before the Trial Court.²³

4. Was the Special Election Erroneously Limited to the Gaming Commission?

The Appellants raise several arguments challenging the legitimacy of the special election. One such argument must be addressed and disregarded as a matter of course. The Appellants argued that a special election should have included a full ballot, as depicted on the original ballots of July 26, 2003. This assertion is without rational basis and lacks merit.

No challenge to the election was made other than to the results of the Gaming Commission. The only issue was what should happen as a result of the Election Board's failure to include Mr. Metoxen on the ballot list for the Gaming Commission. That all open positions were listed on the same ballot is incidental and does not justify a new election for every available position on the original ballot. Elections are an essential function of the democratic process. Courts should be hesitant to interfere with that process, and irregularities or errors in an election should be handled in the least intrusive way possible. It is patently ridiculous to conclude that because one person's name was omitted from one part of the ballot for one Oneida entity, that all entities with

²² Rules of Appellate Procedure 2(G) **Oneida Administrative Procedures Act**: An appellant may choose to file an appeal under the time line established by the Oneida Administrative Procedures Act, which provides that an appeal must be filed within thirty business days of the entry of the original hearing body decision. (1) In such an instance, a fully completed appellant's brief must be filed, which shall be in conformance with these rules regarding brief format. (2) The appellant's brief will be subject to initial review, and the matter will proceed immediately with the filing of the respondent's brief and further appellate processes.

²³ See Grignon, Alfrieda vs. Senior Center, 3 O.N.R. 3-46, 46 (97-EP-0008, 5/6/97) The Oneida Appeals Commission will normally only consider those issues which were properly raised and argued before the original hearing body and Powless, Debra vs. Oneida Election Board, 2 O.N.R. 3-56, 57-58 (95-CVL-0017, 6/7/96) Issues not properly raised before the original hearing body will not be fully considered at the appellate level.

an open seat up for election should go through another election. The remedy created by the original Trial Court was narrowly designed to address the issue raised by the complainant, Mr. Metoxen. This Court will not address the Appellants' essential challenge to the legitimacy of that remedy because that challenge is collateral and untimely.

5. Was the Trial Court Acting Outside the Scope of its Authority?

This issue raised by the Appellants remains intricately linked to the issues of whether the original Trial Court was erroneous. That question cannot be effectively addressed because the challenge is untimely. The Appellants raise an issue that because no explicit remedy of a special election is listed in the Election Law, that the Trial Court was not authorized to create that remedy as a result of the agreement between Mr. Metoxen and the Election Board.

There are no remedies to be found within the Election Law for this situation. That is true. The only clear remedy available under the Election Law is related to when a candidate is found to be ineligible. Such a candidate has the ability to appeal such a finding and to be found eligible by the Oneida Appeals Commission so that he or she may be placed upon the ballot.²⁴ The Election Law does provide for recounts²⁵ and other challenges²⁶ to the results of an election. The Oneida Appeals Commission, as the judicial branch of the Oneida Nation, is authorized to create remedies that are deemed to be just under the circumstances of a particular case.²⁷

This Court will not address whether the remedy of a special election was just, appropriate, or otherwise authorized by the Election Law. Such a question has not been raised in an effectively timely manner. It will therefore remain a question for the next election, unless the Oneida Business Committee and/or General Tribal Council chooses to amend the Election Law. Such an amendment or amendments could more clearly establish the process for challenging election results, notice rules to parties of actual or apparent interest, and the remedies available under particular types of challenges. Until such amendments are considered and adopted, however, authority to interpret legislation will remain with the Appeals Commission as the judicial branch and remedies created and as is deemed just under particular circumstances.²⁸

IV. Decision

The Trial Court decision is not clearly erroneous, arbitrary and/or capricious, or outside the scope of its authority. The Appellants' challenge to the special election for the Gaming Commission was untimely and that conclusion is affirmed by this Appellate Court.

24 Election Law 2.5 Section B Eligibility Review 2.5-4 and 2.5-5
25 Election Law 2.9 Section D Recount Procedures 2.9-8, 2.9-9, 2.9-10.
26 Election Law 2.10 Section C Declaration of Results/Challenges 2.10-4.
27 Rules of Civil Procedure, Rule 18(C).
28 Resolution 8-19-91-A. Creation of Appeals Commission as judicial branch of government designed to enhance sovereign authority of the Oneida Tribe and separate functions of legislative, executive, and judicial branches of government.