

TRIBAL COURT
LITTLE RIVER BAND OF OTTAWA INDIANS

SARA AGOSA,
Plaintiff,

Case No. 21-000535-EB

V.

Hon. Angela Sherigan

LRBOI ELECTION BOARD,
Defendant.

Sara Agosa
Plaintiff in Pro-per
755 Alfa Court, Apt. 1-D
Portage, MI 49002

Jo Anne M. Ybabben
Attorney for Defendant
49501 Meadowwood Road
Oakhurst, CA 93644

OPINION AND ORDER AFTER HEARING
ELECTION BOARD DECISION REVIEW/APPEAL

A hearing on Plaintiff's Appeal from an Election Board Decision denying her challenge and request for hearing was held on July 7, 2021, in which all parties and/or their attorneys appeared.¹

JURISDICTION

Under the Little River Band of Ottawa Indians (LRBOI) Constitution, Article VI, the Tribal Court is given broad jurisdiction over conflicts and matter that are addressed by LRBOI laws, and is charged with, and has the authority to hear all cases and matters in law and equity.

Section 1 "The judicial power of the Little River Band shall be invested in a Tribal judiciary, which shall consist of the Tribal Court, a Court of Appeals, and such inferior courts as the Tribal Council may from time to time ordain and establish."

Section 8 — Powers of the Tribal Court

(a) The judicial powers of the Little River Band shall extend to all cases and matters in law and equity arising under this Constitution, the laws, and ordinances of or applicable to the Little River Band including but not limited to:

¹ This Opinion and Order was due on July 12, 2021, and is being issued one day late due to a death in the Judge's family.

1. To adjudicate all civil and criminal matters arising within the jurisdiction of the Tribe or to which the Tribe or an enrolled member of the Tribe is a party.

2. To review ordinances and resolutions of the Tribal Council or General Membership to ensure they are consistent with this Constitution and rule void those ordinances and resolutions deemed inconsistent with this Constitution.”

THE COURT FINDS that it has jurisdiction.

STANDARD OF REVIEW

The Election Board Regulations, Chapter 12, Section 4(c) states:

Review Standard. All appeals of Final Election Board Decisions before the Tribal Court must be reviewed on a clear error standard. Additionally, the Court *shall be bound by the Election Board's findings of fact*. There shall be deference given to the Election Board's determination as the *government officials responsibility for interpreting their own regulations*. *The Tribal Court's review of the Election Board's determination is limited to interpretation and application of law or regulations*. No new or additional evidence in support or in opposition to the Election Board's decision shall be introduced to the Tribal Court. The decision of the Tribal Court shall be final.

Emphasis added.

Pursuant to the Constitution, the Tribal Court is the final, and official interpreter of the Constitution, Laws and Ordinances, Resolutions and Regulations. Article VI, Section 9 states “...no person exercising powers of the legislative or executive function of the government shall exercise powers properly belonging to the judicial branch of government...”. Article IX, Elections, Section 1(d) states that “the Election Board shall issue such rules and regulations, consistent with this Constitution...” Nowhere in the Constitution is the Election Board given authority to, or the responsibility of being the final interpreter of its own regulations. Therefore, the COURT FINDS, that the language which reads “the Court shall be bound by the Election Board's findings of fact” in Chapter 12, Section 4(c) of the Election Board Regulations is inconsistent with the Constitution, and the Court it is not bound by the Election Board's findings of fact.

BURDEN

The burden of proof to reverse an Election Board decision is on the party seeking relief. Election Board Regulations, Chapter 12, Section 4(b).

TIMING ISSUES

TIMING – FILING OF APPEAL

In the Election Board's response and Motion to Dismiss, it argues that Ms. Agosa's appeal to the Tribal Court should be dismissed for filing late. Ms. Agosa argues that she did not file late.

The Election Board Regulations, at Chapter 12, Section 4, allows for an appeal of Election Board decisions to the Tribal Court within five (5) business days of the decision being issued. The Election Board issued its decision which was dated June 21, 2021. It was sent to Ms. Agosa via U.S. Mail and by email at 6:38 p.m. on June 21, 2021. The Election Board argues plain language, that the Regulations simply state "5 business days from the date of issuance" and does not state a time, and therefore the 5 days starts on June 21, 2021. Ms. Agosa argues that it was after normal business hours and therefore the 5 days counting starts on June 22, 2021.

Using the Election Board's argument, it would allow issuance of a decision at 11:59 p.m., in effect denying a full day for purposes of counting. This Court is a court of law and equity and has the authority for final interpretation of the Constitution, and all cases and matters in law and equity arising under the Constitution or under the laws and ordinances application to LRBOI, and thus,

THE COURT FINDS that for purposes of counting, regular business hours shall be used. Since the publication of the Decision was at 6:38 p.m. on June 21, 2021, that date will not count as the first day as it was after business hours. The date of issuance for counting is June 22, 2021. Therefore, Ms. Agosa's appeal is timely.

TIMING – FILING OF COMPLAINT WITH ELECTION BOARD

The Election Board argues that Ms. Agosa's complaint, rather it be a dispute or a challenge was untimely, and therefore, this case should be dismissed. Ms. Agosa argues that this is challenge not a dispute, therefore it is timely as she filed it within 5 business days of constructive notice.

Chapter 12, Section 1(C) of the Regulations states that the period of time for submitting a timely dispute runs from the date that the Tribal Member had actual or constructive knowledge of the act or event giving rise to the dispute, and gives five business days to file, but in any case, no dispute may be filed fewer than ten business days prior to the Election. This makes the deadline for filing a dispute April 16, 2021, or in this case, June 15, 2021. Ms. Agosa filed her complaint on June 15.

Chapter 12, Section 2(B)2, states "any candidate that was not elected in the current election may file a challenge..." and at Section 2C(2), that challenges must be filed within 5 business days of the announcement of unofficial election results. The deadline for filing a challenge was May 7, 2021.

ISSUES ON APPEAL

There are two issues on appeal. First, did the Election Board error in its decision to deny Ms. Agosa a hearing. Second, did the Election Board error in its decision to treat Ms. Agosa's complaint as a dispute rather than a challenge.

ISSUE 1. Did the Election Board commit clear error in its decision not to hold a hearing on Plaintiff's complaint?

Plaintiff argues that she has a right to a hearing. The defendant argues that it has the authority to issue a decision without a hearing pursuant to its Regulations at Chapter 13, Section 2(E). Chapter 13, Section 2(E) states that "[u]nusual circumstances may arise wherein the Election Board may review a request for a hearing and based upon its review, may request and determine a hearing is not appropriate under the circumstances. In the event that the Election Board declines to hold a hearing, it may thereafter issue a written decision without a hearing." A written decision was issued in this matter. The burden is on Plaintiff to show that the election board made a clear error, which she has failed to do. A blanket statement of "having a right to a hearing" is insufficient for the Court to reverse the Election Board's decision not to conduct a hearing.

Therefore, the COURT FINDS that the Election Board did not error in denying Ms. Agosa a hearing.

ISSUE 2. Did the Election Board commit clear error when it treated Ms. Agosa's complaint as a dispute rather than a challenge?

Plaintiff, Ms. Agosa, argues that the Defendant, Election Board, made a clear error in converting her Challenge into a Dispute. The difference between a dispute and a challenge is found in the definitions of the two terms in the Regulations. A Challenge is a "direct challenge to the results or outcome of an election, the object of which is to affect the results of an election." A Dispute means "a complaint, the object of which is to affect how the election is conducted as it moves forward. An election dispute can question candidate eligibility, voter eligibility, the ballot, and vote count process."

Defendant argues that Plaintiff's complaint is a Dispute as it is questioning the ballot.

Had the Election Board not converted Ms. Agosa's complaint which she titled as a Challenge, into a dispute, Ms. Agosa would not have received any type of analysis regarding her complaint as the Regulations state at Chapter 12, Section 2(B)2 that any "candidate" that was not elected in the current election may file a challenge... Ms. Agosa was not a candidate in the current election.

Therefore, the COURT FINDS, that Ms. Agosa's complaint is a Dispute.

Plaintiff's main argument is based on an email sent from the Director of IT to the Ogema. Defendant, in its decision, and argument stated that the information/evidence Plaintiff presented was insufficient, and not proper evidence as it was hearsay. The Court agrees. Plaintiff failed to provide a sworn statement from the director, or any other person attesting that there were problems with the ballot². Additionally, the emails show that there were only 2 people that did not receive ballots and that was corrected, and that True Ballot received the files and that they could work with them and move forward. Ballots were sent out and the 2021 Election results have been certified. She also speculates that there may be others who did not receive ballots, without providing any evidence. Mere speculation is insufficient.

Therefore, the COURT FINDS that the Election Board did NOT commit clear error in denying Ms. Agosa's election dispute.

July 13, 2021
Date


HON. ANGELA SHERIGAN



² Plaintiff requested that the Court issue subpoenas to the IT Director as well as the Vendor and various other people during the hearing. The request is/was denied for 2 reasons: 1. The burden in election disputes and challenges is on the challenger, meaning it is up to the challenger to gather and present evidence; and 2. The Court only reviews what was presented to the Election Board, nothing new is allowed either in support of or in opposition to at the appeal level.