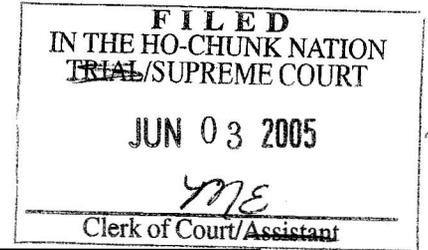


IN THE
HO-CHUNK NATION SUPREME COURT



KENNETH LEE TWIN,

DECISION

Appellant,

vs.

**HO-CHUNK NATION,
HO-CHUNK NATION LEGISLATURE, and
HO-CHUNK NATION ELECTION BOARD,**

Appellees.

**Case No. SU 05-05
Trial Ct. CV 05-38**

This matter came before the full Court on Friday May 27, 2005 via teleconference call due to its vital importance as an Election Case. The matter was heard before Associate Justice Mark D. Butterfield, Associate Justice Jo Deen Lowe and Chief Justice Mary Jo B. Hunter, presiding.

CASE SUMMARY

This an appeal of an Election Board decision in the Primary Election held on April 23, 2005 where the appellant was a candidate for elective office as a Legislator in Area I of the Ho-Chunk Nation. There were three official candidates and write-ins. The election tallies as first reported on the electronic count showed that the appellant was the apparent winner of the election with 168 votes; Elliot Garvin was the apparent runner-up with 72 votes and Boye G. Ladd the apparent third place finisher with 44 votes, with 9 write-ins and 10 blank ballots.¹ However, due to an electronic error in recording the positions of the candidates on the ballot with their names on the tally sheet, the count was off. Upon motion of an election Board member and a proper second, the Election Board

¹ The totals are from the findings of fact in the Trial Court Decision of May 19, 2005, p. 2.

voted to manually recount the ballots which resulted in a nearly identical count only this time with the appellant a distant third with only 44 votes, Elliot Garvin, the incumbent legislator for Area I, with 167 votes and Boye G. Ladd with 72 votes of the votes cast. Only the top two vote getters advance to the General Election. If the appellant fails in this appeal, he will not advance to the General Election on June 7, 2005.

Decision

The Supreme Court has examined the reasons advanced by the appellant for his appeal on a shortened timeframe as we must in an Election case. He claims the Trial Court unfairly discounted his allegation of animus of the person on the Election Board making the second for the recount and this prejudiced his case. More substantively he claims that the Election Board has no independent authority to order a recount if the vote totals containing an error in the methodology of counting as occurred here. He does not dispute the evidence adduced at trial and reflected in the findings of fact that the votes initially attributed to him actually were for Elliot Garvin or that the votes attributed to Mr. Garvin were actually votes for Boye G. Ladd.

The HCN Supreme Court rejects the contention of the appellant as to both matters raised and denies his appeal because it fails to raise issues of sufficient magnitude needing to be addressed. The appellant does not deny that there was an error in the counting methodology in the Election for Area I. We do find not an error in the findings of fact which shows that the appellant finished in third place in the vote tally after the hand recount.

Legally, the appellant wishes us to declare that the Election Board did not have the authority to independently order a recount and therefore despite the fact that the

credible evidence shows that there was a error in the electronic vote counting where the proper vote totals were credited to the wrong candidates, the appellant's contention is that this error should be perpetuated. The HCN Courts have long been reluctant to overturn election results unless there has been some "clear and convincing evidence" that there was a violation of the Election Ordinance. Such a result would also clearly violate the Purpose and Construction clause of the Ho-Chunk Nation Election Code. See 2 HCC § 6(2) (set forth more fully below). Therefore, the Court rejects the technical interpretation urged by the appellant that the hand recount was improperly authorized under the Election Ordinance. The Court affirms the Trial Court's interpretation as a reasonable construction which fulfills the purpose and construction clause of the Election Ordinance and its dismissal of the election challenge on this basis.

The HCN Supreme Court finds that the Trial Court did not commit an abuse of discretion in discounting the claim of animus by Election Board member Jill Pettibone as the Election Board voted 10-0 to conduct a hand recount. Any animus she might have had was not critical to having a recount, as all members of the Election Board concurred that there should have been a recount.

This Court may agree that the authority of the Election Board to conduct recounts ought to be more clearly set out in the Election Ordinance but that is no basis for reversal. This Court finds no error in the Trial Court's interpretation of the Election Ordinance that Election Board members are eligible voters and that good cause was shown for a recount under the Ordinance.² See HCC § 6 (12) (i).

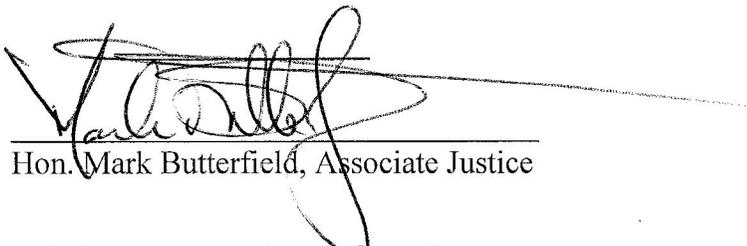
² 2 HCC § 6(2) **Purpose and Construction.** This Ordinance is enacted to provide basic rules and establish election procedures to ensure that all elections are conducted in a fair and proper manner. This Ordinance shall be interpreted *liberally in order [sic] accomplish this purpose. Substantial compliance*

Admittedly this is an unusual circumstance, but given the often contentious election process within the Ho-Chunk Nation and the right of any voter to file an election challenge pursuant to HCN CONST. ART. VIII § 7, no one can predict the next glitch in the election process. Despite ten years of court decisions on appeals of election results under the HCN CONSTITUTION new grounds continue to appear for resolution. Democracy is an ongoing process, which needs continual refinement and vigilance in order that the votes of the electorate are properly counted.

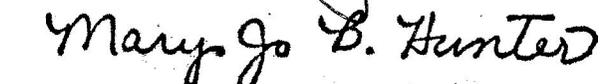
The Supreme Court therefore finds insufficient merit in this appeal to have it proceed to full briefing and *Oral Argument*. The appeal is therefore denied and the General Election for Area I Legislator slated for June 7, 2005 shall proceed as schedule.

IT IS SO ORDERED this June 3, 2005 at Black River Falls, WI.

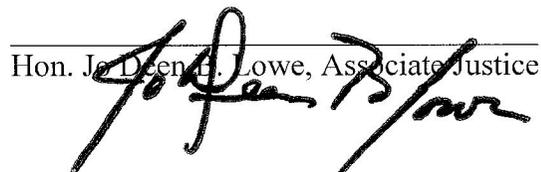
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Hon. Mark Butterfield, Associate Justice



Hon. Mary Jo Hunter, Chief Justice



Hon. Jo Deen B. Lowe, Associate Justice

shall satisfy this Ordinance. Technicalities shall not be used to interfere with, delay or block elections or cause confusion or loss of voter confidence in the election system. (Italics added for emphasis).

FILED
IN THE HO-CHUNK NATION
~~TRIAL~~/SUPREME COURT

JUN 03 2005

ME
Clerk of Court/Assistant

CERTIFICATE OF SERVICE

I, Mary K. Endthoff, Clerk of the Ho-Chunk Nation Supreme Court, do hereby certify that on the date set forth below, I served a true and correct copy of the Decision in Case No. SU05-05, upon all persons listed below:

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Hon. Mark Butterfield
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Date: June 3, 2005

Mary K. Endthoff
Mary K. Endthoff
HCN Supreme Court Clerk