

**IN THE TRIBAL COURT OF THE
LEECH LAKE BAND OF OJIBWE**

In the matter of the Election Protest of:

Donald Headbird, Sr.

**NOTICE OF FILING
OF ORDER**

. Petitioners.

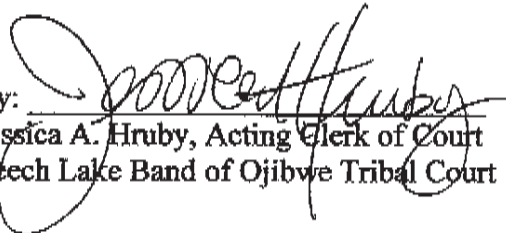
To: Petitioner Donald Headbird, Sr., by and through his attorney Rebecca Jo McConkey, PO Box 208, Bemidji, MN 56619 (via U.S. Mail and fax); Leif Rasmussen, Esq., as attorney on behalf of the LLBO General Reservation Election Board, 650 Southdale Office Centre, 6600 France Avenue South, Edina, Minnesota 55435 (via U.S. Mail, electronic mail, and facsimile); the Leech Lake Band of Ojibwe Legal Department (via facsimile); and the Minnesota Chippewa Tribe (via hand delivery).

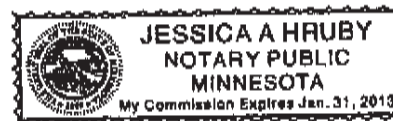
NOTICE OF FILING OF ORDER

You are hereby notified on July 15, 2011 a FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION was filed in the above-entitled matter.

A true and correct copy of this notice has been served by U.S. Mail, electronic mail, or facsimile upon the parties named herein at the last known address of each.

DATED: July 15, 2011

By: 
Jessica A. Hruby, Acting Clerk of Court
Leech Lake Band of Ojibwe Tribal Court



**IN THE TRIBAL COURT OF THE
LEECH LAKE BAND OF OJIBWE**

In the matter of the Election Protest of:

Donald Headbird, Sr.

Petitioner.

**FINDINGS OF FACT
CONCLUSIONS OF LAW
AND
FINAL DECISION**

DISCUSSION

Introduction

The Leech Lake Band of Ojibwe conducted a special election on June 28, 2011 for the Secretary Treasurer seat pursuant to the Minnesota Chippewa Tribe Election Ordinance #10 revised December 8, 2009 ("Election Ordinance"). The General Reservation Election Board ("GREB") of the Leech Lake Band of Ojibwe certified the results of the election as follows:

Secretary Treasurer:

Donald "Donnie" Headbird	1,098	49.86%
Donald "Mick" Finn	1,104	50.14%

The Petitioner (also known as "Contestor") Donald Headbird, Sr., timely filed a Notice of Contest on July 5, 2011. The Notice of Contest from the Petitioners requested a hearing and discovery.

A scheduling conference was held on Friday July 8, 2011. An Order was issued dated July 8, 2011 ordering witness lists, discovery requests and setting a formal hearing.

The formal hearing was set for Thursday, July 14, 2011 at 10:00 a.m. at the Minnesota Chippewa Tribe Offices located in Cass Lake, Minnesota. The formal hearing was open to the public. A hearing was set for and held on July 11, 2011 for the purpose of hearing discovery requests. The Petitioner filed and served a Preliminary Witness List and Motion for Discovery both on Friday July 8, 2011. The Petitioner filed and served a Demand for Discovery and a Memorandum of Law in Support of Demand for Discovery and to Support Definition of Election Irregularity both dated July 10, 2011. The Court issued subpoenas on July 12, 2011. The Court issued a Conclusions of Law and Order dated July 12, 2011 governing discovery.

Formal discovery was conducted on Wednesday July 13, 2011 and was attended by the undersigned Judge Heidi A. Drobnick; Attorney for Contestor Rebecca Jo McConkey; Attorney for the GREB Leif Rasmussen; Contestor Donald Headbird, Sr. along with Nikki Dickenson and Lori Gamache; Election Board Members Sarah Wakanabo and Sharon Wilson Rodriguez; and Clerk of Court Jessica Hruby. Technical advisor Tim Sanchez from Automated Election Services appeared by phone for a brief period to answer all the questions put forth by the parties.

A formal hearing was held on Thursday July 14, 2011 at 10:00 a.m. before the undersigned Judge Heidi A. Drobnick. The Petitioner Donald Headbird, Sr., was present at the hearing with his attorney, Rebecca Jo McConkey. Respondents, the General Election Board members were also present at the hearing with their attorney Leif Rasmussen.

Non-Party Requests**Participation**

On July 12, 2011 Donald "Mick Finn" filed with the court two letters. The first letter alleges: "The present Notice of Contest is deficient in two ways: first, it was not filed with the Election Contest Judge and second, the Notice was not faxed out from the Tribal Court until after the 5:00 p.m. deadline on the seventh day." The second letter informs the court Mr. Finn would like to participate in the hearing with legal counsel. Mr. Finn is not a party to this contest; therefore, he is unable to participate as a party including filing objections and motions. However, the Court allowed Mr. Finn to ask questions of the witnesses who testified concerning activity he participated and provide testimony,

Timely Filing

Mr. Finn was not a party to this matter and is therefore not able to participate in this election protest. However, the Court inquired whether either of the parties would be adopting the objection to timely filing. Both parties declined to adopt Mr. Finn's objection and neither party had an objection to the timely filing of the Notice of Contest by Contestor. The Court, however, for transparency purposes and for the record informed the parties and Mr. Finn on the record at the formal hearing that the Notice of Contest was timely filed. The Court had made arrangements for the filing with both the Tribal Court and the Minnesota Chippewa Tribe. The Petition was timely filed with the Judges office within the deadline provided in the Election Ordinance. The Contestor filed the Notice of Contest with the Tribal Court at 4:33 p.m. on July 5, 2011. The Tribal Court Clerk called the Judges office at 4:38 p.m.. The Petition was faxed promptly faxed by the

Clerk of Court to the Judges office. The Tribal Court Clerk sealed the Notice of Contest for the Judges' office at 4:55 p.m. and stamped it as such. The entire Notice of Contest Petition was received via in the Judges office by 4:58 p.m. All exhibits were received in the Judges office before 5:00 p.m. except the final exhibit which was received at 5:01 p.m.. The times were recorded as it happened by the Judge's Clerk of Court.

LEGAL STANDARD

"The burden of proof of irregularities alleged rests with the contestor." Election Ordinance Chapter III § 2.B.1. "The contestor . . . must present relevant and material evidence demonstrating how any irregularities, alleged and proven, affected the outcome of the election." Election Ordinance Chapter III § 2.B.2. "[T]he judge may affirm the results of the election or order that the results of the election are invalid and order that a new election will be held under conditions specified in the judge's order. In no case will the judge order that a new election be held unless the contestor has demonstrated violations of this Ordinance which changed who was the winning candidate (or candidates in a Primary) for an office. Election Ordinance Chapter III § 2.B.8.

ISSUES RAISED IN THE NOTICE OF CONTEST

1. Lack of cross tabulation by the GFEB resulted in double voting.
2. A variety of technical violations including counting and accounting for ballots such as spoiled ballots, absentee ballots, signatures of voters, notary stamp irregularity, non-residents allowed to vote and malfunctions of the tally or public counters on the automated machines.
3. Absentee votes also voted at precincts.
4. Cross-District votes and non residents allowed to vote at precinct polls.
5. Discrepancy of counting absentee ballots between the official counting site and the final printed vote tally.

6. Election precinct/officers/clerks vouching for voter's identification.
7. Election precinct/ officers/clerks handling ballots.
8. Voter intimidation and electioneering by Robert Budreau Sr., and Avis Poupart in violation of Election Ordinance Chapter II Sections 1.B (1) and (2).
9. Violation of Security by allowing electioneering pursuant in violation of Election Ordinance Chapter II Sections 1.B (2) and (3).
10. Non-Leech Lake voters casting ballots.
11. Absentee ballots request cards mailed out by opposition pre-marked for voting district in violation of Election Ordinance Chapter I Section 6 (C), U.S. Mail fraud in violation of 18 U.S.C. §§ 1341 and 1342, and conspiracy to oppress free exercise of election rights. .
12. Voters changing voting districts in violation of the Election Ordinance Chapter I Section 6 – Voter Eligibility.
13. Election Tampering and Vote Buying by the opponent Donald “Mick” Finn, Steve White District II Representative and the opponents supporters via gas vouchers and cash
14. Tribal program funds were used to influence votes.
15. Allegations that violations of Federal law occurred pursuant to 18 U.S.C.A. § 597 in that expenditures were made to influence votes.
16. Allegations of embezzlement from an Indian tribal organization occurred pursuant to 18 U.S.C.A. §§ 1151 – 1170 - embezzlement from an Indian tribal organization. This issue contains several allegations of spending by incumbents of tribal gas vouchers, band employee loan program, tribal referral program spending, gaming purchasing, public works, council line item overspending, and other funds.

DISCUSSION

Stipulations

The parties stipulated to the following documents and the Court accepted them into evidence:

1. GREB July 5, 2011 recount certification of the Leech lake Reservation Special Election of June 28, 2011;

2. The Minnesota Chippewa Tribe General Reservation Election Board Procedural Manual including the Election Board Duties.

Evidence Admitted.

The Court accepted the following documents into evidence:

Exhibit #1 – Donald “Mick” Finn Letter

Exhibit #2 – 2011 Special Election: Government Side Layoff/justification (a/k/a Firing List)

Exhibit #3 – Facebook posting of the Firing List on the Leech Lake Forum posting on June 2, 2011 at 2:29 p.m.

Exhibit #4 – Affidavit of Kimberly Jenkins, James Raish, and Beverly Raish.

Exhibit #5 – Affidavit of Terrance Jones dated July 10, 2011

Exhibit #6 – Not offered

Exhibit #7 – Affidavit of Veronica Jones dated July 4, 2011

Exhibit #8 – Affidavit of Brittany Brown dated July 10, 2011

Exhibit #9 – Affidavit of Ricky LaDuke dated July 10, 2011

Exhibit #10 – Affidavit of Blair Brown dated July 10, 2011

Exhibit #11 – Affidavit of Penny Lynn Jones dated July 10, 2011

Exhibit #12 – Affidavit of Paul E. Lindom dated July 4, 2011

Exhibit #13 – Affidavit of Nancy Lee Har: dated July 10, 2011

Exhibit #14 – Affidavit of Geraldine Hardy dated July 3, 2011

Exhibit #15 – Affidavit dated July 10, 2011

Exhibit #16 – Affidavit of Charles R Staples III dated July 9, 2011

Exhibit #17 – Affidavit of Les Headbird dated July 9, 2011

Exhibit #18 – Che We Vendor Summary Report dated June 22, 2011

Exhibit #19 – Che We Vendor Summary Report dated June 23, 2011

Exhibit #20 – Che We Vendor Summary Report dated June 24, 2011

Exhibit #21 – Che We Vendor Summary Report dated June 25, 2011

Exhibit #22 – Che We Vendor Summary Report dated June 26, 2011

Exhibit #23 – Che We Vendor Summary Report dated June 27, 2011

Exhibit #24 – Authorization by Steve White and Receipt for \$30 Gas Voucher to Aaron Winell

Exhibit #25 – Authorization by Steve White and Receipt for \$ 25 Gas Voucher to Deanna Wind

Exhibit #26 – Authorization by Steve White and Receipt for \$ 30 and \$ 29.98 Gas Voucher to Kathie Fairbanks

Exhibit #27 – Authorization by Steve White and Receipt for \$ 69.72 Gas Voucher to Kathie Fairbanks

Exhibit #28 – Authorization by Steve White and Receipt for \$ 25 Gas Voucher to Vern Wakanabo

Exhibit #29 – Authorization by Steve White and Receipt for \$ 30 and \$25.14 Gas Voucher to Robbi Budreau

Exhibit #30 – Authorization by Steve White and Receipt for \$ 20.04 Gas Voucher and \$ 20.04 refund to Brian Northbird

Exhibit #31 – Emergency Gas Voucher for medical reasons for \$15.00 authorized by Robbie Howe-Bibeau

Exhibit #32 – Authorization by Steve White and Receipt for \$ 25 Gas Voucher to Pete Moss

Exhibit #33 – Authorization by Steve White and Receipt for \$ 25 Gas Voucher to Poncho Folstrom

Exhibit #34 – Authorization by Steve White and Receipt for \$ 91.60 to Jasper Finn Gas Voucher to

Exhibit #35 – Authorization by Steve White and Receipt for \$ 25 Gas Voucher to Bernie Brown

Exhibit #36 – Che We Clerk Log of Gas Vouchers for July 27, 2011 and July 28, 2011

Exhibit #37 – Che We Clerk Log of Gas Vouchers for July 27, 2011 and July 28, 2011

Exhibit #38 – Memorandum dated June 29, 2011 to Wally Storbakken from Arthur “Archie” LaRose

Exhibit #39 – Memorandum dated June 6, 2011 from RBC to All Government and Gaming Employees regarding Circulating of False Political Layoff Document

Exhibit #40 - #42 - Not offered

Exhibit #42 – Political Advertisement

Exhibit #43 – Not offered

Exhibit #44 – Affidavit of Randy Finn dated July 10, 2011

Exhibit #45 – Memorandum of Steve White dated June 20, 2011 regarding District II funds

Exhibit #46 – Che We Vendor Summary Report dated June 28, 2011

Exhibit #47 – Affidavit of Rod Northbird dated June 28, 2011 in response to affidavit of Terrance Jones.

Exhibit #48 – Affidavit of Bernard Brown dated July 12, 2011 in response to Penny Jones Affidavit

Exhibit #49 – Affidavit of Donald “Mick” Finn dated July 12, 2011 in response to affidavit of Les Headbird

Exhibit #50 Affidavit of Donald “Mick” Finn dated July 12, 2011 in response to affidavit of Brian Northbird

Exhibit #51 – Affidavit of Donald “Mick” Finn dated July 12, 2011 in response to affidavit of Ricky LaDuke

Exhibit #52 – Affidavit of Donald “Mick” Finn dated July 12, 2011 in response to affidavit of Charles R. Staples III

Exhibit #53 – Affidavit of Donald “Mick” Finn dated July 12, 2011 in response to Geraldine Hardy

Motions and Objections

Exhibits

The GREB made a standing objection for all exhibits except Exhibit # 44. The GREB’s position in this contest is that the GREB followed it’s own policies and procedures and the Election Ordinance, and therefore, the issues of buying votes and electioneering through use of the voucher program were issues not in the control of the GREB and therefore should not be admitted. Attorney Rasmussen argued that any allegations of vote buying or vouchers in exchange for votes while serious and the proper subject of an investigation but should be conducted in a different forum such as criminal arena. Attorney McConkey countered that buying votes with cash or by electioneering

within 200 feet of the precinct through awarding gas vouchers is a voting irregularity under the ordinance as the activity affected a just and fair election where the true will of the people is not reflected and interferes with the ability to have a fair and just election in a democracy.

The Court accepted the Exhibits as the Court determined that the events and Exhibits presented by the Petitioner are directly related to the June 28, 2011 election and the Exhibits were relevant and material to the matters alleged as the basis for the contest irregularities. See Chapter II Section B.2 (2) and (3); and the Court has the power to "order such submissions as the judge deems necessary," Chapter III Section 2(A).

Issues Addressed

The parties conducted formal discovery relating to many of the technical issues alleged by the Contestor. The formal discovery resolved many of the questions regarding the conduct of the election that the Contestor plead in his Notice of Contest. Therefore, the Contestor brought forth only the following issues for the Court to consider at the hearing:

1. Improperly denying the right to vote Kimberly Jenkins and cross-district voting;
2. Improperly denying the right to vote to Terrance Jones;
3. Electioneering by Robert Budreau, Sr., at the Cass Lake Precincts;
4. Electioneering by Avis Poupart at the Minneapolis Precincts;
5. Payment for votes – "vote buying" by the opponent and his campaigners;
6. Electioneering by Steve White at the Che We gas station within 200 feet of the Absentee precinct by authorizing gas vouchers a mere 25 feet from the precinct;
7. Fear and intimidation through a false Firing List "chilled" the voting process and affected the right to vote.

Issue 1 - Kimberly Jenkins

Contestor argues that Ms. Kimberly Jenkins was improperly denied the right to vote in violation of Chapter I Section 6(B) which states: "Eligible voters are enrolled members of the Tribe, 18 years of age or over. All eligible voters will be entitled to vote by secret ballot on Election Day." Contestor called both Kimberly Jenkins and her boyfriend James Raisch. Mr. Raisch testified that Ms. Jenkins lived with him and is Mother in Mission since April. Mr. Raich went to vote and Ms. Jenkins remained at home with their new born baby. Mr. Raisch He also testified he told the election judges at the Mission Precinct that Ms. Jenkins had documents to prove she lived there for over 30 days. Ms. Jenkins resided about ¼ mile from the Mission Precinct. Mr. Raich testified that the judges at the Mission Precinct refused to allow Ms. Jenkins to vote there as she was registered in Inger. The Judges directed Ms. Jenkins the Absentee Precinct in Cass

Lake or the Inger Precinct. Based upon this, Ms. Jenkins testified she intended to vote but did not go to the Mission Precinct based upon the Judges representations. She testified attempted to go to the Che We Absentee Precinct but was unable to obtain a ride in order to vote. She also testified she would have voted for Donald Headbird, Sr. if she could have voted. The GREB argued that Ms. Jenkins had plenty of time to get to another precinct and that she did not actually present herself to the precinct.

Contestor Headbird testified that during the discovery it was found that a voter was turned away from the Inger Precinct and directed to vote in Che We Absentee Precinct as she had a New York address. However, the voter was allowed to vote in the Cass Lake Precinct even though she was registered as Absentee and provided an address in Wisconsin. This action by the GREB was in direct opposition to the action took in the Mission Precinct with Ms. Jenkins above.

Election Ordinance Chapter I Section 6.C provides regarding Voter Eligibility:

Eligible voters are enrolled members of the Tribe, 18 years of age or over. All eligible voters will be entitled to vote by secret ballot on Election Day. To be eligible to cast a ballot a voter must meet all constitutional requirements. In addition, to be eligible to cast a vote for Committeeperson, a voter must have resided within the district for at least thirty (30) days immediately preceding the election, unless the voter casts an absentee ballot as permitted by this ordinance.

There is no residency requirement in the Election Ordinance for reservation wide elections such as the current position for Secretary Treasurer.

Issue 2 – Terrance Jones

Contestor argues that Mr. Jones was improperly denied the right to vote in violation of Chapter I section 6 (B) and Chapter II Section 2.A (2). Mr. Terrence Jones testified that as he was walking to the door of the Cass Lake Precinct and the doors were closed at two minutes to 8:00 p.m. and locked him out. He was just feet away from the door at this time. Mr. Terrence Jones testified he was intending to vote and that he would have voted for Donald Headbird, Sr. A Cass Lake Election Judge testified that at about 7:59 she instructed Security to close the door at 8:00 p.m. However, she had not checked the clock at the precinct to ensure it was the correct time. Security testified he closed the door promptly at 8:00 p.m., and that he saw Mr. Terrence Jones coming to the door. Mr. Finn submitted an affidavit which alleged that an individual say Terrence Jones, Sr. vote. Testimony established that there are two Terrence Jones eligible to vote. Terrence Jones, Sr. did vote. Terrence Jones who testified above did not vote. This fact was agreed to by the parties. The GERB objected to Mr. Jones testimony as he originally stated he arrived a few mintues after 8 p.m. However, Mr. Jones affirmed the testimony as found in his affidavit. The Election Board did not establish that clocks were checked for accuracy to ensure that closing the door on a voter a few seconds before he entered the building was within the election ordinance.

Issue 3 – Robert Budreau Sr. Electioneering

Contestor submitted an affidavit from Veronica Jones, Cass Lake Election Precinct worker, that Robert Budreau, Sr., was electioneering in front of the Cass Lake Precinct just outside the door and clearly heard him telling 2 voters to vote for Mick Finn. Security testified that he did not see Robert Budreau electioneering but that if he did he would have done something about it. The GREB called both security guards to show they did not see the electioneering. Mr. Budreau is a supporter of Mr. Finn.

Issue 4 – Avis Poupart Electioneering

Contestor called Alan Gross who testified he saw Avis Poupart electioneering at the Minneapolis Precinct. Ms. Poupart did this for several minutes and only stopped when the Security Guard came out. The GREB called Ms. Poupart to admitted to electioneering at the Minneapolis Precinct but stated she quit immediately when asked by the Security guard from the GREB. This was confirmed by the Security guard's testimony.

Issue 5 – Payment For Votes

1. Contestor admitted an Affidavit from Brittany Brown stating on June 28, 2011 Bernie Brown came to her house and paid her and a non-band member \$5 each to vote for Mick Finn and that she was going to vote to Donald Headbird, Sr., but did not once she was being paid to vote for Donald "Mick Finn."
2. Contestor admitted an affidavit from Ricky LaDuke stating on June 28, 2011 he received \$5.00 from Bernie Brown to vote for Mick Finn so he did. He stated he would have voted for Donald Headbird if he was not paid. Mr. Finn submitted an affidavit where he stated that he never "gave or paid money to buy votes or to have a person vote for me."
3. Contestor admitted an affidavit from Blair Brown that on June 28, 2011 her Uncle Bernie Brown paid her \$5 to vote for Mick Finn so she did. Mr. Finn submitted an affidavit where he stated that he never "gave or paid money to buy votes or to have a person vote for me."
4. Contestor called Penny Lynn Jones who testified that on June 28, 2011 she was paid \$5 in person at her home on Plantation Road by Bernie Brown to vote for Mick Finn so she did. Otherwise she was planning on voting for Donald Whitebird, Sr. Ms. Jones also testified she saw Bernie Brown pay \$5 to Brittony Brown and Derek Winsell to vote for Mick Finn. Derek could not vote as he is not a Leech Lake Band member. Ms. Jones also testified she saw Bernie Brown pay Ricky LaDuke and Ellen Jones both \$5 to vote for Mick Finn. Ms. Jones finally testified that Brittany Brown was going to testify but that her Uncle Bernie Brown scared her not to come. Mick Finn submitted an affidavit from Bernie Brown that he never saw Ms. Jones on election day and that she was lying. Ms. Brown responded that he probably paid so many people on that day that he does not remember paying her specifically. Mr. Finn's affidavit states that he never saw Penny Lynn Jones on the date of the election. Penny Lynn's testimony did not include a statement that she saw Mr. Finn on election day.

5. Contestor called Paul Lindom to testify. Mr. Lindom lives in Cass Lake. Mr. Lindom testified that he was paid \$20 by Mick Finn personally in front of the Che We to vote for him on June 28, 2011. Payment was conditioned by Mr. Finn upon voting for Mr. Finn so he did vote for Mr. Finn. Mr. Lindom also testified he would have voted for Donald Headbird, Sr. Mr. Lindom testified that Mr. Finn asked him to get some of his relatives to vote for him. So, Mr. Lindom testified he paid his cousin Rob Adams \$10 to vote for Mick Finn. The payment was conditioned upon him voting for Mr. Finn. Mr. Lindom also testified that the Firing List scared him for his job security and influenced the way he voted.

6. Contestor called Nancy Lee Hart. Ms. Hart testified she received cigarettes – Seneca 100's – and asked to vote for Mr. Finn. She received this on the day of the election June 28, 2011 from Steve White at her trailer. She informed Mr. White she already voted for Mick Finn. Steve White gave her the cigarettes anyway.

7. Contestor called Gerldine Hardy. Ms. Hardy testified she gave a ride to her cousin Rebecca Beadreu and LaKisha Bedreau to Mick Finn's home on the day of the election June 28, 2010. Her cousin wanted to find Mr. Finn as she need money for her grandbaby's diapers. Ms. Hardy testified at Mr. Finn's home she observed and heard Mr. Finn pay both Rebecca and LaKisha \$5 in order to vote for him. Ms. Hardy testified she told Mr. Finn she did not need any money. However, when she went to shake his hand he passed her \$5 with the hand shake. She gave he money to her cousin right away in the car. To her knowledge Ms. Hardy believed that her cousin's already voted. Mr. Finn submitted an affidavit where he stated that he never "gave or paid money to buy votes or to have a person vote for me."

8. Contestor admitted an affidavit from Ellen Jones dated July 10, 2011 stating that she was paid \$5 to vote for Mick Finn so she did.

9. Contestor admitted an affidavit form Charles R. Staples,, III that he received \$20 check from Mick Finn to vote for him. He would have voted for him if he had not gave him money for gas and cigarettes. Mr. Finn submitted an affidavit where he stated that he never "gave or paid money to buy votes or to have a person vote for me."

10. Contestor called Les Headbird who testified he received \$10 from Mr. Finn at Mr. Finn's home right after the primaries with the understanding he for him so he did vote for Mr. Finn. Les Headbird also testified that Mr. Finn told him the FBI was watching him. Mr. Finn asked him didn't he received money every time he came to his home? Mr. Headbird testified yes he went to Mr. Finn's home every time he ran in an election but could not recall any other time he went to him home. Mr. Finn submitted an affidavit where he stated that he never "gave or paid money to buy votes or to have a person vote for me."

11. The Court allowed Mr. Donald "Mick" Finn an opportunity to ask the above witnesses any questions he had of them. Mr. Finn acknowledged on the record that he asked all the questions he wanted. Also, the Court allowed Mr. Finn to submit Exhibits 47 – 53 to refute the testimony and affidavit of Contestor. Mr. Finn was allowed to testify

also. Mr. Finn testified that every person who testified was lying. He felt hurt and betrayed by people he thought were his friends. Mr. Finn stated that allowing the testimony was not in compliance with the Election Ordinance.

The following is a summary. Contestor provided credible testimony which was not credibly rebutted that:

1. Four voters were paid money by either Mick Finn or his campaign supporters and this changed there votes. They would have voted for the Contestor had they not received payments.
2. Eight other voters were paid or witness^{3e} being paid cash or cigarettes by Mick Finn or his campaigners including District II Representative Steve White and Bernie Brown to vote for Mick Finn.
3. One of the above voters was paid by Mick Finn himself within 25 feet of the Che We Absentee Precinct.

The Contestor provided credible evidence that a total of 12 voters were paid to vote for Mick Finn by either Mick Finn himself, Steve White or Bernie Brown. All but one payment was made on election day June 28, 2011. It is also noted by the Court that Steve White authorized Bernie Brown a non-District II Band member gas vouchers on election day. The evidence provided by Contestor was not only credible and consistent but shocking in its honesty and how common place the activity was perceived by the witnesses. It is even more shocking in a Community of poverty where \$5, cigarettes or a tank of gas is the difference between making ends meet or having an urgent crisis such as no food or inability to attend necessary medical appoints. The witnesses who came forward are certainly to be commended especially where if issues such as that present in Issue #8 – Firing List - is even remotely true and the economic survival of families is tied to silence or covering for others. These witnesses deserve to have their voice heard.

The Contestor has the burden of proof to show that election “irregularities” occurred that affected the outcome of the election. This is a specific requirement of the

Ordinance which is set out in Chapter III 2 (B)(1). However, the term “irregularities” is not found anywhere within the Election Ordinance. This requires the court to provide a definition. The GREB argues a narrow interpretation of the term to include only specific violations of the Election Ordinance which is within the GREB control. Contestor argues that this interpretation allows misconduct, fraud and intimidation in the election process to go unfettered. Further, that the term must incorporate some form of outright unconscionable behavior such as vote buying which takes the will of the voters out of the electorates hands.

The Court agrees with the Contestor. Election contests are the only avenue currently available to voters and candidates to ensure a fair election which reflects the will of the people can not be determined. Vote buying interferes with the will of the people to the extent that the result of the election can not be determined. The GREB agrees that vote buying is very serious and merits investigation and should be investigated but that this is not the proper forum. The Court does not agree.

This Court looked to other jurisdictions both tribal and state to see the definition of irregularity and found that indeed most states and tribes considered violations of statutes an irregularity. However, the Court found no jurisdiction which limited the term irregularity to a violation of statutes. All tribes and states include in the term irregularity some form of other activity such as fraud or misconduct which renders the intent of the voters in doubt. Additionally, in most Tribal elections reviewed by the Court the tribal Judges viewed use of governmental property for the benefit of one candidate to the exclusion of the other as an irregularity. For example see, *In re Cheadle*, Chickasaw Nation 2000. So for example, gas vouchers used for the benefit of only one candidate

would be viewed as irregular. However, gas vouchers used to provide mass transportation from rural areas via buses for the benefit of all voters would not be irregular if provided by the government to encourage the right to vote by all voters. In Minnesota, in the absence of fraud, bad faith or constitutional violations an election will not be violated by minor irregularities including statutory violations, if elections nonetheless resulted in a free and fair expression of the will of the voters. In other words Minnesota has law much like the MCT Election Ordinance which only allow the irregularities would affect the outcome of the elections. However, activity such as fraud, bad faith or misconduct also are part of the definition of irregularity.

Issue #6 - Electioneering by Steve White by authorizing payment for gas in the amount of \$726.48 to voters on the day of election at the Che We which is approximately 25 feet from the absentee precinct.

The Contestor argues that Steve White District II Representative engaged in electioneering and vote buying within 25 feet of the Che We Absentee Precinct and 200 feet of the Cass Lake Precinct by authorizing gas vouchers for Band members in violation of the election ordinance Chapter II Section 1 (B) and that gas vouchers to solicit votes is an irregularity pursuant to the Election Ordinance Chapter II Section 1 . The GREB argues that each RTC member has authorization to issue gas vouchers and that as long as that member issues the gas vouchers within their line item budget no activity is irregular absent a policy preventing such activity by RTC members on election day.

Contestor admitted Exhibit # 45 through witness Arthur LaRose. The Memorandum is dated June 20, 2011 from Steve White District II Representatives to all Leech Lake Band Members. This Memorandum was posted at the Community Center for the public on or about June 20, 2011. The Memorandum states: " The District II Office is out of funds and unable to financially assist band members at this time. All requests for

assistance will be held and reviewed on July 1, 2011." July 1, 2011 is significant as it is a new fiscal year for the Leech Lake Band. Mr. LaRose testified that spending after you are out of funds results in the Council member spending over their line item budget and putting the Band in a deficit. Mr. LaRose also testified that at a weekly briefing held by the RTC with the attendance of all four Tribal Council members an agreement was reached among all four RTC members that none of the RTC Members would issue gas vouchers on election day except for emergencies for medical, funeral or wakes due to volume of gas vouchers issued last election day and the appearance of that activity. Mr. LaRose testified this was discussed at the Reservation Tribal Council ("RTC" or also known as the Reservation Business Committee "RBC") Council briefings at more than one meeting. Mr. LaRose also testified that briefings for the RTC are usually held weekly but are not a duly called formal meeting of the RTC. However, significant business is conducted at the briefings by the Council such as this issue. Aurleia Major the Chairman's Executive Assistant testified that she was instructed of this decision by the RTC and was aware that other RTC members had agreed to the decision and other Executive Assistants were also aware of this decision by the RTC.

Ms. Major testified that Judith Fairbanks a Leech Lake Band member requested gas from Chairman LaRose which would violate this agreement between the RTC members. When informed of the RTC decision, Ms. Fairbanks stated that he lost three votes. It was shown that she contacted District Representative II Steve White and received gas in the amount of \$20.

Contestor admitted Exhibit #46 through Economic Development Director Wally Storebakken entitled Che We Vendor Summary Report showing that the total amount of

gas vouchers issued by District II representative Steve White on June 28, 2011 was \$726.48, for Robbie Howe District I representative was \$15 and for Eugene "Ribs" Whitebird was \$40, Also Contestor admitted the Che We Clerks log as Exhibit # 36 showing who was paid gas vouchers and also showing that all Gas Vouchers authorized on June 28, 2011 were authorized by Steve White District II Representative. Contestor also entered Exhibits 24 through 35 showing the Tribal Council verbal Charges and the actual receipt for the gas signed by the Leech Lake Band Member. Exhibit 31 entered by Contestor shows that the \$15 dollars

Exhibit #46 admitted by Contestor showed that \$15 dollars was authorized by District Representative Robbie Howe-Bibeau for a medical emergency to Brooke L. Jenkins on June 28, 2008. Eugene "Ribs" Whitebird testified that the \$40 authorized for an emergency the previous day on June 27, 2011. Mr Whitebird brought the documentation to show the court with the request from the Band member and other documentation showing it was for an emergency. Mr. Whitebird testified that it is his practice and he has instructed his staff that all requests must be logged in and the proper paperwork (Requests from the Band member) be submitted for requests for gas vouchers. He also testified he had the biggest District and was bigger than the other two combined population wise. He also was shown Exhibit # 36 of the clerk logs. Upon examination, he testified that all but two of the individuals that Steve White authorized for gas vouchers on June 28, 2011 were from his District and not Steve White's District. Mr. Whitebird testified it was not unusual for other District Representatives to authorize payments for another District Member as a courtesy. However, it was common practice to call and inform the other District Representative of the action to prevent abused and keep the

other District Representative up to date with their own constituents. Mr. Whitebird testified he was never called on election day by Mr. White even though he had his phone all day and was his District and the area. Mr. Whitebird also testified that it was unusual for another District Representative to authorize so many and such a large dollar amount for other District's constituents on one day.

Mr. Whitebird also testified that it is his practice to issue gas vouchers only for emergencies which is defined usually as medical, wakes and funerals. However, that on occasion he will authorize gas for another emergency. He stated that this is his policy on issuing gas vouchers and that there is no Tribal Policy governing what a Tribal Council member can issue a gas voucher for. Chairman LaRose testified that since 2002 his practice is the same and that he issues gas vouchers usually only for emergencies which is defines as for medical, wakes and funerals. Chairman LaRose also testified that since 2002 since he has been on the Council every RTC member he is aware has the same policy regarding gas vouchers including the current sitting RTC members.

The GREB questioned Mr. Whitebird whether the GREB would have been able to stop the activity of Representative Steve White in authorizing gas vouchers at the Che We to which he responded no he did not believe so.

The individuals who Representative Steve White authorized for gas vouchers on June 28, 2011 were generally known in the Community to support the candidacy of Donald "Mick" Finn and also where known to campaign in the community for the candidate Donald "Mick" Finn including Poncho Folstrom, Bernie Brown, and Jasper Finn (Mick Finn's son).

The Contestor called Jeff Oakgrove, Jr. from Cass Lake who testified that he received a handwritten letter dated June 28, 2011 with Steve White's cell phone number stating that if you call Steve White and tell him you voted for Mick Finn Steve White will provide a gas voucher to you. He did not receive a gas voucher and he voted for Donald Headbird, Sr. He did testify that in his area this information was generally known.

Chairman LaRose testified that he heard Steve White was giving out gas vouchers from a Band members. He testified he did not believe that as the RBC had agreed not to do this. He went to Che We to see if it was and observed authorizations. This was at about 1 p.m. Therefore, on June 29, 2011 he issued a Memorandum to Wally Storbakken to secure all the store records and video tapes at Che We and Northern Lights. Exhibit 38.

The partial summary of the individuals who were provided gas by authorization of Steve White is as follows:

1. Bernie Brown received \$25 gas vouchers. The Court notes that Bernie Brown also paid voters to vote for Mick Finn.
2. Judy Fairbanks is also known as DoDo Fairbanks received \$20 in gas on June 27, 2011 after being refused by Chairman's LaRose office. She also received an additional \$30 on June 28, 2010.
3. Mick Finn's son, Jasper Finn, receiving a full tank of gas on June 28, 2011 at 8:39 a.m.
4. Glenn Fisher receiving two full tanks of gas: one for \$53 at June 27, 2011 at 2:51 p.m. and the second for \$95 on June 28, 2011 at 11:05 a.m.
5. Kathy Fairbanks received gas on June 28, 2011 at 10:39 a.m. for \$30 and also at 10:47 a.m. for a full tank in the amount of \$69.72.
6. Rey Jenkins received \$40 in gas on July 27, 2011 at 4:30 p.m. then again \$30 on June 28, 2011 at 5:25 p.m.

The Contestor showed by credible evidence that District II Representative Steve White provided District III voters gas vouchers including known campaign supporters and campaigners for Mick Finn for a total of \$726.48 dollars on election day contrary to a

RTC agreement to not provide gas vouchers on election day. None of the other RTC members provided tribal gas vouchers on election day. This activity was 25 feet outside the Che We Absentee Precinct and constitutes electioneering under the Election Ordinance. The GREB argues this is not within their control. However, this same complaint was lodged the prior election where the dollars were alleged to be greater. It is well within the GREB control to establish different polling places. District II Representative also campaigned by providing cigarettes in exchange for votes for Mick Finn on one occasion.

Issue #8 – Fear and intimidation through a false Firing List “chilled” the voting process and affected the right to vote.

Contestor argues that the Firing List naming 48 individuals who would be fired if Donald Headbird, Sr., was elected had a “chilling” effect on voting. That the list was published first by Donald “Mick Finn” and subsequently published on Facebook shortly before the election causing fear and intimidation and influenced the election. In support of this Contestor called Chairman LaRose, Representative Whitebird and Contestor Donald Whitebird, Sr. All testified that the first time they saw the list was after the list was distributed by Donald “Mick” Finn at the Twin Cities forum. See Exhibit 1 and 2. In other words, Donald “Mick” Finn was the first to distribute this list. Also Randy Finn was called by the Contestor who is the Personal Assistant of the Chairman and District I and III. Exhibit 2 has a post it note which is allegedly signed by Randy Finn and addressed to “Arch” which states, “Donnie has signed off on this intst (sp) list. He doesn’t like anyone on here anyways. We got this wrapped up. Call when you get this. Randy.” Randy Finn testified this was not his signature and the Contestor submitted

Exhibit #44 which showed his actual signature. Chairman LaRose testified he believed the signature came from one of his critics, James Michaud.

All three witnesses testified that many of the individuals listed were friends and people they worked with closely. LaRose, Whitebird and Headbird each testified they did not create the list. However, each testified that due to the list being release three weeks before the election, posted of facebook, distributed in mail boxes at the RTC offices, and distributed at local meetings that it was impossible to control the damage and fear the Firing List created. Mr. Headbird testified he had almost a 2 to 1 margin over Mick Finn in the primary election and that this list made his supporters wary to vote. All three testified to the fear and intimidation that was being expressed to them by voters, family and friends by the firing list.

FINDINGS OF FACT

1. Kimberly Jenkins was improperly denied the right to vote in violation of Chapter I section 6 (B) which and as such is an election irregularity under the Election Ordinance.
2. Terrance Jones was improperly denied the right to vote in violation of Chapter I section 6 (B) and Chapter II Section 2.A (2) and as such is an election irregularity under the Election Ordinance.
3. Four voters were paid money by either Mick Finn or his campaign supporters and this changed their votes. These particular voters would have voted for the Contester had they not received payments. This is an irregularity under the Election Ordinance. To find otherwise would allow the unfettered purchase of votes from a vulnerable population within striking distance of all precinct polls. This violates the very soul of the electoral process and requires a finding of irregularity. Finding otherwise impinges upon the rights of every voter who honestly cast his/her vote.
4. Eight other voters were paid or witnessed being paid cash or cigarettes by Mick Finn or his campaigner including District representative Steve White and Bernie Brown to vote for Mick Finn. This is an irregularity under the ordinance. The Court can not determine the true will of the voter in this situation.

5. One of the above voters was paid by Mick Finn himself within 25 feet of the Che We Absentee Precinct on election day in violation of Chapter II Section 2.
6. District II Representative Steve White provided District III voters gas vouchers to known campaign supporters and campaigners for Mick Finn for a total of \$726.48 dollars on election day contrary to a RTC agreement to not provide gas vouchers on election day. None of the other RTC members provided tribal gas vouchers on election day. This activity was 25 feet outside the Che We Absentee Precinct and constitutes electioneering under the Election Ordinance and as such is a violation of the Chapter II Section B (2). It is well within the GREB control to establish different polling places if in fact the GREB is unable to control blatant electioneering within 200 feet of the precinct. District II Representative also campaigned by providing cigarettes in exchange for votes for Mick Finn on one occasion.
7. The Firing List created fear and intimidation which affect individuals votes. The Court was unable to determine the extent of the influence.

CONCLUSIONS OF LAW

The Contester met his burden of prove that sufficient irregularities occurred which affected the outcome of the June 28, 2011, Leech Lake Band of Ojibwe election as required under Chapter III §§ 2.B.1 and 2.B.2 of the Minnesota Chippewa Tribe Election Ordinance #10 dated December 8, 2009. The evidence adduced in the contest of the final vote in this Special Election demonstrated that there were substantial irregularities and that the outcome of the election was affected so that the results of the election are determined to be INVALID.

ORDER

Therefore, the results of the June 28, 2011 Leech Lake Band of Ojibwe election are invalid pursuant to Chapter III § 2.B.8 of the Minnesota Chippewa Tribe Election Ordinance #10 revised date December 9, 2009 as the Contester met his burden and proved violations that changed who was the winning candidate for the Secretary Treasurer seat.

A new Special Election must be held in strict compliance with the provisions of the Minnesota Chippewa Tribe Election Ordinance #10 as revised 12/08/09. All necessary measures should be taken to ensure the election is conducted in a fair and lawful manner.

Any appeal of this matter must be conducted in accordance with Minnesota Chippewa Tribe Election Ordinance #10 as revised 12/08/09 Chapter III Sections 3 and 4.

Dated: July 15, 2010


Heidi A. Drobnick
Reservation Election Contest Judge
Leech Lake Band of Ojibwe