



INTERIOR BOARD OF INDIAN APPEALS

Edmond H. Burns and Mark Hammons v. Anadarko Area Director,
Bureau of Indian Affairs

11 IBIA 40 (01/14/1983)

Reconsideration denied:
11 IBIA 133



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

EDMOND H. BURNS
MARK HAMMONS

v.

ANADARKO AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 79-34-A

Decided January 14, 1983

Appeal from decision of Anadarko Area Director, Bureau of Indian Affairs, disapproving attorney contract.

Appeal dismissed.

1. Administrative Procedure: Generally

The Board of Indian Appeals will dismiss as moot any case in which no controversy remains between the parties.

APPEARANCES: Mark Hammons, Esq., for appellants; Benno G. Imbroko, Esq., Anadarko Field Solicitor for appellee Anadarko Area Director.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

On May 24, 1979, the Anadarko Area Director, Bureau of Indian Affairs (BIA), disapproved an attorney contract between appellant Mark Hammons and the Cheyenne-Arapaho Tribal Council. The contract had been adopted pursuant to Tribal Council Resolution No. 1A, March 10, 1979. The Area Director's decision to disapprove the contract was made for two reasons:

1. The Cheyenne-Arapaho Tribal Council adopted Tribal Council Resolution No. 5 on May 5, 1979, which declared null and void the previous action taken by the Cheyenne-Arapaho Tribal Council on March 10, 1979.

2. Tribal Council Resolution No. 1A, adopted on March 10, 1979, was never certified by the elected Secretary of the Cheyenne-Arapaho Business Committee as required by Article XIV, Section 3, of the Constitution and Bylaws of the Cheyenne-Arapaho Tribes of Oklahoma.

Hammons appealed this decision to the Commissioner of Indian Affairs on July 10, 1979. ^{1/}

Also on May 24, 1979, appellant Edmond H. Burns, then the presiding officer of the Cheyenne-Arapaho Tribal Council, served a notice of appeal on the Area Director challenging certain of his decisions. The challenged decisions were the Area Director's disapproval of the attorney contract with Hammons; the approval of an attorney contract with another attorney adopted at the May 5, 1979, tribal council meeting and amendments to that contract; failure to recognize certain constitutional amendments adopted by the Cheyenne-Arapaho Tribal Council at the March 10, 1979, meeting; recognition of the May 5, 1979, tribal council meeting as legitimate; and recognition of the tribal budget adopted at the May 5, 1979, meeting. Burns' appeal to the Commissioner was filed on July 9, 1979, by his attorney, appellant Hammons.

On September 5, 1979, the Acting Deputy Commissioner of Indian Affairs transferred the two appeals to the Board of Indian Appeals pursuant to 25 CFR 2.19. On September 14, 1979, the Board issued a notice of docketing which advised the parties of their briefing privileges. No briefs were filed. On February 20, 1980, the Board referred the case to the Hearings Division of the Office of Hearings and Appeals for an evidentiary hearing and recommended decision.

A hearing was held by Administrative Law Judge Sam E. Taylor on May 29, 1981, and a recommended decision was forwarded to the Board on November 19, 1982. The Administrative Law Judge recommended: (1) The tribal council meeting of February 10, 1979, was duly continued until March 10, 1979, and again to May 12, 1979, under the provisions of Roberts Rules of Order (Revised) which had been adopted for use in tribal council meetings by Article XVI, Section 7, of the Constitution and Bylaws of the Cheyenne-Arapaho Tribes of Oklahoma; (2) the tribal council meeting of May 5, 1979, was not proper under Article XVI, Section 4, of the tribal constitution which requires, *inter alia*, 30 days notice of special meetings of the tribal council to be published in the tribal newsletter and/or other appropriate newspapers; and (3) the failure of the tribal council secretary to certify resolutions passed upon and adopted by the tribal council does not amount to veto power over those resolutions. Therefore, the Administrative Law Judge recommended that the May 5, 1979, attempt to repeal the actions taken at the March 10, 1979, meeting were void.

Parties were advised of their rights under 43 CFR 4.368 to file exceptions to the recommended decision. No exceptions were filed.

Discussion and Conclusions

At the May 1981 hearing, the Assistant Area Director for the Anadarko Area stated that because of a November 10, 1979, tribal council meeting,

^{1/} The time for filing a notice of appeal for both appellants Hammons and Burns was extended by the Commissioner.

"basically, all of these issues in this appeal are moot. The contract [with Hammons] was approved. The [constitutional] amendments were approved, and they were submitted to the voters, the voters overwhelmingly, the tribe as a whole, rejected those amendments" (Tr. 47-48).

The Board was not aware of the November 10, 1979, meeting when it referred this case for an evidentiary hearing in February 1980. It appears, however, from the failure of any party to appear before the Board or to object to the delay in the holding of the evidentiary hearing and the issuance of a recommended decision, that the parties are in agreement that the case is moot.

[1] Apparently no issue remains in controversy between appellant Hammons and appellee. 2/ Although several of appellant Burns' grounds for appeal to the Commissioner present continuing issues relative to the BIA's functions in approving or disapproving certain tribal council actions, these issues will not be addressed in the absence of any indication from the parties that the BIA's actions are still actively contested.

Accordingly, pursuant to the authority delegated to the Board of Indian Appeals, 43 CFR 4.1, this appeal is dismissed as moot.

//original signed
Franklin D. Arness
Administrative Judge

We concur:

//original signed
Wm. Philip Horton
Chief Administrative Judge

//original signed
Jerry Muskrat
Administrative Judge

2/ Although the transcript indicates that Hammons did legal work for the tribes between Mar. 10 and Nov. 10, 1979, which was not compensated under the Nov. 10 contract, he has made no claim for restitution.