



INTERIOR BOARD OF INDIAN APPEALS

Walter F. Reese, et al. v. Minneapolis Area Director, Bureau of Indian Affairs

17 IBIA 169 (07/06/1989)



United States Department of the Interior

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

WALTER F. REESE, ANISHINABE AKEENG, INC.,
and THE ENROLLED MEMBERS FOR CONSTITUTIONAL RIGHTS
v.
MINNEAPOLIS AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 89-41-A

Decided July 6, 1989

Appeals from a December 20, 1988, decision of the Minneapolis Area Director, Bureau of Indian Affairs, declining to take action concerning the outcome of a June 1988 tribal election for Chairman of the Leech Lake Band of the Minnesota Chippewa Tribe.

Affirmed.

1. Indians: Tribal Government: Constitutions, Bylaws, and Ordinances--Indians: Tribal Powers: Tribal Sovereignty

In furthering the doctrines of Indian sovereignty and self-determination, the Department of the Interior has recognized the right of Indian tribes initially to interpret their own governing documents and to resolve their own internal disputes, and, in administering the government-to-government relationship with a tribe, has given deference to that tribe's reasonable interpretation of its own laws.

2. Indians: Tribal Government: Constitutions, Bylaws, and Ordinances

Under Article IV of its constitution, the Minnesota Chippewa Tribe has authority to establish a tribal appellate forum to supervise the actions of an Election Judge in order to determine whether the Judge has acted within the scope of the authority delegated under the tribal election ordinance.

APPEARANCES: Kurt V. BlueDog, Esq., Bloomington, Minnesota, for appellant Walter F. Reese; Michael T. Stehle, Esq., Minneapolis, Minnesota, for appellants Anishinabe Akeeng, Inc., and The Enrolled Members for Constitutional Rights; Mark A. Anderson, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Twin Cities, Minnesota, for appellee.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

On May 5, 1989, this appeal was transferred to the Board of Indian Appeals (Board). The appeal was pending before the Washington, D.C., office of the Bureau of Indian Affairs (BIA) on March 13, 1989, the date new appeals regulations for BIA and the Board took effect. ^{1/} Walter F. Reese (Reese), Anishinabe Akeeng, Inc. (Anishinabe Akeeng), and The Enrolled Members for Constitutional Rights (Enrolled Members; collectively, appellants) seek review of a December 20, 1988, decision of the Minneapolis Area Director, BIA (appellee), concerning the results of the June 1988 tribal election for the Reservation Business Committee of the Leech Lake Band of the Minnesota Chippewa Tribe (MCT). For the reasons discussed below, the Board affirms that decision.

Background

The MCT was formed in 1936 when six Chippewa bands ^{2/} joined together to adopt a constitution under section 16 of the Indian Reorganization Act of 1934, 48 Stat. 987, 25 U.S.C. §§ 476 (1982). Under the MCT Constitution, each of the six bands is governed by a Reservation Business Committee (RBC) composed of a Chairman, Secretary-Treasurer, and from one to three Committeemen. These officials are elected to four-year terms. In addition, the MCT is governed by a Tribal Executive Committee (TEC) composed of the Chairman and Secretary-Treasurer from each RBC. A President, Vice-President, Secretary, and Treasurer are selected from the TEC members for two-year terms.

A general election for each of the six RBCs was held on June 14, 1988. The election for Chairman at Leech Lake resulted in a dispute. None of the five candidates for Chairman received more than half of the 1,903 votes cast. Daniel Brown received 820 votes, the largest number received by any candidate; Reese received 183 votes. On June 15, 1988, the Leech Lake General Election Board (Election Board) certified Brown to be the winner of the election.

On June 21, 1988, Reese protested the results of the election under section XIV of tribal Election Ordinance #4. ^{3/} Reese alleged irregularities

^{1/} See 54 FR 6478 and 6483 (Feb. 10, 1989).

^{2/} These bands are the Bois Forte (Nett Lake), Fond du Lac, Grand Portage, Leech Lake, White Earth, and Mille Lac.

^{3/} Section XIV of Election Ordinance #4, adopted in 1981, states:

"Only a candidate may protest an election for an office for which he/she is a candidate on the reservation of his/her enrollment. The written notice of protest of any election shall be made to the Reservation Court Judge within seven (7) days following the election. The notice must set out specific grounds for the protest. The Reservation Court Judge shall schedule for hearing on the protest within seven (7) days. The decision of the Judge shall be final.

"Each Reservation Business Committee may select an Election Judge in the event they have no reservation court for the purpose of hearing protests, pursuant to their own ordinance."

in the election process and a violation of Article VIII of the MCT Constitution which provides: "At all elections held under this constitution, the majority of eligible votes cast shall rule, unless otherwise provided by an Act of Congress.

Reese's protest was heard by Election Judge Margaret Seelye Treuer on July 14, 1988. On July 15, 1988, Judge Treuer held there were no "substantial and grave irregularities" in the election process, 4/ but nevertheless invalidated the election because no candidate had received a "majority of eligible votes cast."

On July 17, 1988, the Election Board petitioned Judge Treuer to withdraw her July 15, 1988, order. On July 18, 1988, the MCT filed a motion to intervene, supporting the petition of the Election Board.

The petition and motion were granted on July 19, 1988. Judge Treuer set a hearing for July 20, 1988. At the hearing the Election Board and MCT argued that the Judge had exceeded her authority as an Election Judge by interpreting the MCT constitution. They further asserted that the term "majority" as used in the constitution had already been conclusively interpreted to mean "the most votes cast." This argument was based on two tribal resolutions. Resolution #1-80 states that the TEC

shall henceforth issue written opinions as to the meaning and interpretation of its Constitution. Said opinions shall be issued in writing upon written request of the Reservation Business Committees, the Tribal Executive Director, Division Heads of the Tribe's subdivisions, Tribal Judges, the United States and its various departments and bureaus, the State of Minnesota and its political subdivisions and other entities at the discretion of the Tribal Executive Committee or upon its own motion. Said opinions shall be conclusive and final as to the meaning and interpretation of The Minnesota Chippewa Tribe's Constitution and the powers contained therein. (Said opinions shall be binding upon any tribal court system established by tribal ordinance.)

4/ A 1982 amendment of Election Ordinance #4 added a new section XV, which provides procedures to be followed in hearing an election on protest. As pertinent to this case, section XV states:

"g. The decision of the Judge as to the relevancy and weight of any and all exhibits and evidence shall be final.

"h. The Judge hearing a protest may affirm the results of the election or order that the results of the election are invalid and a new election shall be held.

"In no case shall a Judge order that a new election be held unless the evidence presented by the protester(s) demonstrates that there were substantial and grave irregularities which affected the outcome of the election. Proof of minor and technical irregularities shall not automatically require that a new election be held."

Resolution #5-84, which was adopted pursuant to the authority in Resolution #1-80, provides that the term "majority vote" in Article VIII of the constitution "means the preponderant quantity or share of votes. This means that when there are more than two candidates for an office in an election, that the candidate receiving the most votes will have received the majority of votes cast as required under the provisions of Article VIII."

Judge Treuer rejected the Election Board and MCT's arguments, concluding that the TEC had only those powers delegated to it by the constitution. The Judge noted that the constitution does not grant the TEC the power to interpret or amend the constitution, nor the power to adopt legislation or resolutions in contravention of the constitution. She concluded that Resolution #5-84 was an unlawful attempt by the TEC to amend the constitution.

After the July 20, 1988, hearing was completed, a tribal appellate court was convened to review Judge Treuer's decision. ^{5/} The tribal court held a hearing on July 25, 1988. After the hearing, the court reversed Judge Treuer's decision insofar as it declared the election invalid because of the Judge's interpretation of the constitution.

On August 9, 1988, Reese wrote to the Superintendent of the Minnesota Agency (Superintendent), BIA, requesting him to review the use of a tribal appellate court. Reese argued that the TEC did not have authority to establish such a court. Alternatively, he contended that even if the court was properly established, it did not have jurisdiction to hear the Election Board's appeal. Reese argued that the BIA's trust responsibility required it to investigate his claims, and if the actions of the TEC and Election Board were found to be unlawful, the Superintendent was required to refrain from recognizing the results of the election.

On September 9, 1988, the Superintendent declined to intervene in the dispute.

On September 23, 1988, Reese appealed the Superintendent's decision to appellee, raising the same arguments and additionally contending that the Superintendent had refused to address the real issue, which Reese characterized as unlawful action taken to overturn Judge Treuer's decision. Reese also asked appellee to refrain from recognizing the election results.

On December 20, 1988, appellee also declined to intervene.

Appellant Reese and appellants Anishinabe Akeeng and the Enrolled Members filed separate notices of appeal from appellee's decision with the Assistant Secretary - Indian Affairs. Both also filed separate briefs on

^{5/} Legislation allowing the creation of a tribal court system was enacted in 1985 by Ordinance #15. Sometime on or before June 10, 1988, a Chief Judge was appointed and Rules of Appellate Procedure were established. An Acting Chief Judge was also designated to serve on those cases for which the Chief Judge disqualified himself. Prior to the case at issue here, the tribal court had not heard any cases.

appeal. Because the appeals were pending before the Washington, D.C., BIA office on March 13, 1989, when new appeals regulations took effect, they were transferred to the Board for decision. Reese and appellee filed additional statements with the Board.

Issue on Appeal

Because of differences in characterization and emphasis, there appears to be a dispute between appellants and appellee as to the exact nature of the issue raised in this appeal. Appellee characterizes the matter as an attempt to involve BIA in the tribal election process. Based upon this characterization, appellee argues that tribal law provides no role for BIA in election disputes, and, therefore, argues that neither BIA nor the Board can review the results of the election. Appellee asserts that the Board should issue a decision finding that it has no jurisdiction in this matter.

Appellants state that they recognize tribal law does not provide for BIA involvement in tribal elections and that they are not requesting such involvement. Instead, they cite Wheeler v. United States Department of the Interior, 811 F.2d 549 (10th Cir. 1987), and Milam v. United States Department of the Interior, 10 Indian L. Rep. 3013 (D.D.C. 1982), in support of their argument that in order to carry out its government-to-government relationship with the tribe, BIA has a responsibility to investigate allegations that a tribal government has been elected or seated in violation of the tribal constitution. Appellants thus argue that when unlawful procedures are brought to BIA's attention, it has a responsibility to investigate whether actions taken by the tribal government are taken in compliance with the tribal constitution, and to refrain from recognizing any action taken in violation of the constitution (Opening Brief of appellants Anishinabe Akeeng and the Enrolled Members at 20, citing Milam, *supra*, at 3015). Appellants allege there were clear violations of the tribal constitution in the aftermath of the June 1988 tribal election and that these violations require BIA to refrain from recognizing the results of the election.

[1] The Board has previously held that, under the doctrines of tribal sovereignty and self-determination, a tribe has the right initially to interpret its own governing documents in resolving internal disputes, and the Department must give deference to a tribe's reasonable interpretation of its own laws. However, the Board has also held that the Department has both the authority and the responsibility to interpret tribal law when necessary to carry out the government-to-government relationship with the tribe. *See, e.g., Fort McDermitt Paiute Shoshone Tribe v. Acting Phoenix Area Director, Bureau of Indian Affairs*, 17 IBIA 144 (1989), and cases cited therein. *See also Wheeler, supra; Goodface v. Grassrope*, 708 F.2d 335 (8th Cir. 1983); Learned v. Cheyenne-Arapaho Tribe, 596 F. Supp. 537 (W.D. Okla. 1984). 6/

Appellants attempt to remove themselves from the general rule requiring non-interference by alleging that the tribal forum created to resolve this

6/ Cf. Prairie Band of Potawatomi Indians v. Acting Anadarko Area Director, Bureau of Indian Affairs, 17 IBIA 97 (1989) (the Department has the same responsibility in administering a tribal judgment fund distribution plan).

election dispute was unconstitutional. They contend that because there was no constitutional tribal procedure for reviewing election results beyond the decision of the Election Judge, the use of such a forum and BIA recognition of the resulting tribal appellate decision violates the tribal constitution.

Discussion and Conclusions

The controversy in this case centers on the use of the newly established tribal court to review Judge Treuer's decision. Appellants argue that the TEC lacked constitutional authority to create this court, the ordinance establishing the court was not properly approved by BIA, subject matter jurisdiction was not properly vested in the tribal court by tribal ordinance, the decision of the Election Judge was final and not subject to further tribal review, the tribal court panel was politically selected by the Chief Judge who had a conflict of interest, the tribal court panel met in closed sessions with the Chief Judge, the tribal court improperly interpreted the constitution after holding that it was not empowered to do so, and the tribal court's interpretation of the constitution was incorrect.

A three-member panel of the tribal court was convened after Judge Treuer issued her decision on reconsideration. The panel utilized the court's designated Acting Chief Judge when the Chief Judge disqualified himself because of a conflict of interest. ^{7/} In a carefully worded and limited decision issued on August 1, 1988, the panel unanimously concluded that it was properly constituted, that it had the authority to review Judge Treuer's decision concerning the extent of her jurisdiction, and that the Judge's decision concerning the extent of her jurisdiction was in error and must be reversed.

Appellants' argument that the TEC lacked authority to establish a tribal court is based primarily upon two opinions rendered by the Department's Solicitor's Office concerning the White Earth Band's authority to reassume exclusive child custody jurisdiction under § 108 of the Indian Child Welfare Act, 25 U.S.C. § 1918 (1982). ^{8/} In these opinions, the Solicitor's Office stated that child custody matters were not specifically delegated to either the TEC or the RBCs under Articles V or VI of the MCT Constitution, and that the preamble and general purposes sections of the constitution could not be used to give the TEC and RBCs more authority than the tribal members had seen fit to delegate.

[2] As the tribal court noted, however, the TEC's authority to supervise elections arises under Article IV of the constitution, which provides that "[a]ll elections held on the six (6) Reservations shall be held in accordance with a uniform election ordinance to be adopted by the Tribal Executive Committee." Election Ordinance #4, as amended, was adopted in the exercise of this Article IV authority.

^{7/} The Chief Judge had represented the Election Board before Judge Treuer.

^{8/} The opinions were written by the Twin Cities, Minnesota, Field Solicitor, on June 10, 1980, and by the Associate Solicitor, Division of Indian Affairs, Washington, D.C., on July 31, 1986.

In its August 1, 1988, decision, the tribal court held that, through Ordinance #15, it had been delegated the TEC's general supervisory authority over an Election Judge. The court thus considered whether, in determining that the election should be invalidated because of her interpretation of the tribal constitution, Judge Treuer had acted within or outside of the scope of her delegated authority under Election Ordinance #4. ^{9/} The court's determination that the part of Judge Treuer's decision which interpreted the constitution was outside the scope of her authority, left intact and explicitly unreviewed, her finding that the irregularities in the conduct of the election were not substantial.

Similarly, the present opinion does not consider such questions as whether the TEC has the authority under the constitution to establish a court with general jurisdiction, what kinds of cases could be heard by a court of limited jurisdiction, or whether BIA approval of the ordinance creating such a court is required. ^{10/} We do conclude, however, as did the tribal court, that the authority to supervise elections granted to the TEC under Article IV of the constitution is sufficient to allow it to delegate authority to determine whether or not an Election Judge has acted within the scope of Election Ordinance #4 to a tribal appellate body separate from itself.

Once it has been found that the TEC had authority to delegate to a tribal court the type of review given in this case, and that, therefore, the creation and use of such a tribal forum did not violate the rights of the tribal members, ^{11/} the Board and BIA have no further role to play in the determination of the results of this tribal election. ^{12/} The matter has been considered and decided by a duly authorized tribal forum. The Department must defer to that body.

^{9/} Although the court concluded its decision with a discussion of the constitutional question that concurred with the TEC's statement of its interpretation of the provision, this part of the court's decision is clearly dicta.

^{10/} These questions are not raised in this appeal. We note without deciding, however, that Article IV does not explicitly make the TEC's supervision of elections subject to review by the Secretary of the Interior. The Board has consistently declined to address issues, especially constitutional issues, that are not clearly required for a decision. See, e.g., Fort McDermitt Paiute Shoshone Tribe v. Acting Phoenix Area Director, Bureau of Indian Affairs, 16 IBIA 221 (1988).

^{11/} At least when it is required to approve tribal actions, the Department has some responsibility to ensure that the tribe has not violated the Indian Civil Rights Act, 25 U.S.C. § 1302(8) (1982), and its due process requirements. See Santa Clara Pueblo v. Martinez, 436 U.S. 49, 66 n.22 (1978).

^{12/} The Board notes that the remaining questions raised to it were also raised to and addressed by the tribal court.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the December 20, 1988, decision of the Minneapolis Area Director is affirmed. 13/

//original signed
Kathryn A. Lynn
Chief Administrative Judge

I concur:

//original signed
Anita Vogt
Administrative Judge

13/ It is apparent from the brief filed by appellants Anishinabe Akeeng and the Enrolled Members that they are seeking redress for what they believe is a long-standing pattern of tribal violations of the rights of individual tribal members. The present case is not, however, the means through which they can achieve their desired result.