



INTERIOR BOARD OF INDIAN APPEALS

Donna Van Zile and James Crawford v. Minneapolis Area Director,
Bureau of Indian Affairs

25 IBIA 163 (02/14/1994)



United States Department of the Interior

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

DONNA VAN ZILE and JAMES CRAWFORD

v.

MINNEAPOLIS AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 93-81-A, 93-82-A

Decided February 14, 1994

Appeals from the removal of individuals from positions on the Executive Council of the Forest County Potawatomi Community.

Affirmed.

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

In furthering the doctrines of tribal 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.

APPEARANCES: Donna Van Zile and James Crawford, *pro sese*; Marcia M. Kimball, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Fort Snelling, Minnesota, for the Area Director.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellants Donna Van Zile and James Crawford seek review of a March 29, 1993, decision of the Minneapolis Area Director, Bureau of Indian Affairs (Area Director; BIA), concerning their removal from positions on the Executive Council of the Forest County Potawatomi Community (Community). For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

Background

Crawford was formerly Chairman of the Community's Executive Council. Van Zile was a member of the Executive Council and was the Community's Housing Director.

Prior to September 26, 1992, a petition was circulated among Community members, calling for a special General Council meeting. The petition stated:

The undersigned Tribal membership of the Forest County Potawatomi do hereby in signing this petition request that the Tribal Chairman James Crawford call and hold a special meeting of the General Council for (1) REMOVAL OF JAMES CRAWFORD AS TRIBAL CHAIRMAN. (2) REMOVAL OF DONNA VAN ZILE AS EXECUTIVE COUNCIL MEMBER, & CHIEF EXECUTIVE OFFICER OF HOUSING. (3) REMOVAL OF HAZEL GEORGE AS EXECUTIVE COUNCIL MEMBER. [1/] Meeting to be held October 17, 1992 (Saturday) at 1:00 p.m. at the Forest County Potawatomi Tribal Center. [Emphasis in original.]

The petition was signed by 26 tribal members. The copy of the petition in the administrative record indicates that it was posted on September 26, 1992.

An unsigned document entitled "Official Notice" and dated October 9, 1992, listed the allegations against Crawford. The notice stated:

The following list will allow you an opportunity to provide answers to these concerns. This notice is issued and is in compliance with the present Constitution and By-laws of the Forest County Potawatomi. Be prepared to answer all allegations levied against you. A fair and equitable decision shall be administered, based on all appropriate data collected and will be presented at the Special General Council Meeting scheduled for October 17, 1992 * * *.

1. Failure to adhere to the budget that was approved by the General Council in November 1991.
2. Failure to develop guidelines and procedures for effective recapture of loans, either to individuals, organizations and/or Federal and State Programs.
3. Failure to follow standard procedures when calling for a meeting of the Executive Council.
4. Failure to manage the economic affairs of the Forest County Potawatomi.
5. Contractual agreements are not in compliance with Federal guidelines.
6. Failure to recognize organized committees established by the General Council.

1/ George has not appealed the Area Director's decision to the Board. Accordingly, the decision has become final as to her removal. The Board does not address any arguments raised by George in the proceedings before the Superintendent or the Area Director.

7. Jeopardizing the integrity and prestige of the Chairmanship of the Forest County Potawatomi Community, Inc.
8. Misappropriation of certain funds, specifically designated, as it pertains to the General Council Budget approved and adopted in November 1991.
9. Continued disregard for the authority of the General Council, as it pertains to certain directives that were issued and carried out.
10. Long distance travel disbursements and reimbursements. Dates and times to be announced at the Special General Council meeting.
11. Failure to develop ordinances, resolutions and other documents for consideration by the General Council.
12. Willfully disregarding the authority vested in the Chairmanship and continuously overstepping these boundaries.
13. Creating chaos and disunity among the general membership of the Forest County Potawatomi.

NOTE: This list may not be complete, however, it must be noted that there are several questions and concerns that will be brought forth at this meeting, that will demand satisfaction, in terms of proper answers.

A similar notice, dated October 14, 1992, was sent to Van Zile.

A General Council meeting was held on October 17, 1992. As a result of the meeting, appellants were removed from their positions, 2/ and new officials were elected to replace them. 3/

2/ Van Zile was removed from both her positions on the Executive Council and as Housing Director. To the extent she seeks review of her removal as Housing Director, the Board lacks jurisdiction over this tribal employment matter. Poncho v. Coshatta Tribe of Louisiana, 14 IBIA 26 (1986). The Community has established Personnel Policies and Procedures under which Van Zile could have contested her removal as Housing Director.

3/ It appears that all parties, including the remaining members of the Community's Executive Council, agree that new officials were improperly elected at the Oct. 17 General Council meeting. Under Article VIII, section 1(c), of the Community's Constitution (Constitution), new officers should have been elected "at the next regular General Council meeting." To the extent that the Oct. 17 election of new officers is at issue in this appeal, the Board affirms the Area Director's determination that the election was improper.

By separate letters dated October 18, 1992, Crawford and Van Zile each sought assistance from the Superintendent, Great Lakes Agency, BIA (Superintendent), in opposing their removal. On October 22, 1992, the Superintendent wrote to the Community's Vice Chairman and asked for the opinion of the three remaining members of the Executive Council (Executive Council) concerning the October 17, 1992, meeting. The Superintendent stated:

Article X, Section 3 of the Tribe's Constitution provides that a majority of the Executive Council "in office" constitutes a quorum to do business, thus can suffice until vacancies are filled. Therefore, you are recognized as the functional majority of the Executive [Council] at this time.

This office has been requested to take a position o[n] the events that have occurred as a result of Special General Council Meeting of last Saturday, October 17, 1992.

The issues of concern are as follows:

- 1) Was the Special General Council of October 17, 1992 a legal meeting? (Was the meeting properly called and posted).
- 2) Were the procedures used in removal in compliance [with] the Tribe's Constitution and Bylaws? (were the accused properly noticed/served, etc.)

* * * * *

We ask that you discuss the contents of this letter * * *, and provide an immediate response, via facsimile, of your position regarding this matter. This office is in critical need of your input prior to the [BIA] taking any position regarding the matter.

The Executive Council responded to the Superintendent's letter on October 22, 1992. On October 23, 1992, the Superintendent recognized the removal of both appellants. The Superintendent stated that his decision was limited to what was necessary to maintain the government-to-government relationship between the Community and the Federal Government, and that he was not addressing the merits of the removals because this was an internal tribal matter. The Superintendent discussed only the procedural aspects of the removals, and concluded that the October 17, 1992, meeting was properly called; appellants waived their rights under Article VIII, section 2(c), of the Constitution by failing to answer the charges against them in writing and failing to object at the meeting that they were not being allowed to speak in their own defense; the General Council erred in filling appellants' vacant positions at the October 17 meeting; and appellants' remaining arguments were not relevant to his decision. He recommended that Van Zile pursue her argument that her rights as a tribal employee were violated under the Community's Personnel Policies and Procedures. The Superintendent noted that his decision was supported by the Executive Council.

Appellants appealed this decision to the Area Director, who upheld it on March 29, 1993, stating that the removals were conducted "in substantial compliance with the requirements of the Tribal Constitution" (Letter at 1). The Area Director specifically noted that Crawford acknowledged receipt of a notice of the meeting, the tribal members relied upon the posting in attending the meeting, appellants did not object to the validity of the meeting before or at the meeting, and appellants failed to avail themselves of the right to respond in writing to the accusations against them.

Appellants appealed to the Board. Appellants and the Area Director filed briefs on appeal.

Discussion and Conclusions

[1] Although the Department has both the authority and the responsibility to interpret tribal law when necessary to carry out the government-to-government relationship with a tribe, a tribe faced with an internal dispute has the right initially to interpret its own governing documents. The Department must show deference to a tribe's reasonable interpretation of its own laws. See, e.g., Wells v. Acting Aberdeen Area Director, 24 IBIA 142, 145 (1993), and cases cited therein.

The Superintendent stated that he sought the opinion of the remaining Executive Council members because the General Council had already given its opinion in the recall and election. The Area Director also noted that the Community did not have another governmental body authorized to review matters of this nature. Although not unanimous on every issue, the Executive Council responded that the General Council meeting fulfilled Constitutional requirements. The Superintendent's action in seeking the opinion of the Executive Council comported with the Federal goals of encouraging tribal sovereignty and self-determination.

Appellants allege, however, that the remaining members of the Executive Council favored their removal. Their unstated implication is that these individuals might have a conflict of interest in responding to the Superintendent's questions. In Greendeer v. Minneapolis Area Director, 22 IBIA 91, 95 (1992), the Board concluded there was no tribal interpretation of the constitutional provisions relating to removal of officers when two diametrically opposite interpretations were presented by the members of the tribal governing body which had split into two factions, one group of which remained in power, while the other group had been removed. In order to give appellants the benefit of every doubt in this matter, the Board concludes that it should not merely defer to the Executive Council's interpretation, but should independently examine the Constitution in order to fulfill the Department's government-to-government responsibilities.

Several provisions of the constitution are at issue. Article III, section 1, defines the Community's governing body to be "the General Council, which shall be composed of all qualified voters of the Community." Article

III, section 6, provides that the General Council shall elect a Chairman, Vice-Chairman, Secretary, Treasurer, and two Council members, who "shall constitute the Executive Council, which shall exercise those powers enumerated in this Constitution and such powers as may be delegated to it by the General Council." The powers of the Executive Council are set forth in Article IV.

Article VIII, section 2, concerns the removal of Executive Council members:

(a) The General Council may remove any elective member of its Executive Council for, but not limited to, any of the following reasons: * * *.

* * * * *

(c) The accused officer may present oral evidence in his/her defense but also must answer in written form the allegations levied against him/her. Testimony for and against the officer by other persons is permitted.

(d) Removal decisions of the General Council shall be final.

Article III, section 3, of the Constitution states that

[t]he Chairman * * * shall call and hold a special meeting within fifteen (15) days from receipt of a written request signed by at least ten (10) qualified voters. Written notice shall be posted at least ten (10) days in advance of the meeting. Such notice shall include the date, time, place and purpose of the meeting.

Appellants contend that the Chairman was not in "receipt" of a written request for a special meeting as required under Article III, section 3, of the Constitution. This argument is based on appellants' assertions that the request was handed to Crawford at an improperly called General Council meeting, that he handed the request to Van Zile, and that she handed it to a third person.

The Board finds nothing in the Constitution which limits the situations under which a request for a special meeting may be presented to the Chairman. The fact that the request was handed to Crawford at an allegedly improperly called General Council meeting is therefore not relevant to the question of whether he was in "receipt" of the request.

Although it appears that Crawford retained possession of the document for only a short period of time, this fact is also not dispositive of whether he was in receipt of it. The document was handed to the Chairman, and he both accepted it and exercised control over it by handing it to Van Zile. The record indicates that Crawford knew the contents of the document. The Board finds that the Chairman was in receipt of the request for a special meeting.

Appellants next argue that the October 17, 1992, meeting violated Article III, section 3, of the Constitution because it was not "called" by the Chairman. Appellants first contend that the Chairman is not required to call a special meeting until he has determined that the petition complies with all relevant constitutional provisions.

The Board has carefully reviewed Article III, section 3, of the Constitution, and finds that the Chairman's responsibilities in calling a special General Council meeting are quite limited. It appears that the Chairman's only responsibility is to determine whether the petition is signed by at least 10 qualified voters. If it is, the Constitution gives the Chairman no further discretion: He/she must then call a special meeting.

Although appellants contend that additional signatures were added to the petition after it was initially handed to Crawford, they do not argue that the petition as originally given to Crawford contained less than 10 signatures. Neither do they challenge the authenticity of any of the signatures. Under these circumstances, it appears that the Chairman was constitutionally required to call a special General Council meeting.

Appellants next argue that the special General Council meeting was not "called" by the Chairman because the time and place for the meeting were established in the petition rather than by the Chairman, and notice of the meeting was posted by the petitioners rather than the Chairman.

Appellants cite the Board's decision in Rhatigan v. Muskogee Area Director, 21 IBIA 258 (1992), in support of their argument that a meeting called by an official or group other than the one designated in the tribal constitution is defective. The tribal constitution under consideration in Rhatigan provided that a special meeting to recall tribal council members was to be called by the Grievance Committee. The meeting actually held was called by the tribal Chairman.

In support of their contention that the petition was defective because it established a date and place for the special meeting, appellants cite a September 24, 1992, opinion rendered by the tribal attorney which states:

The * * * issue is whether the petition is defective because contained within the written petition request was a pre-set meeting date * * *. According to Article III, section 3 of the Tribal constitution, the Chairman "shall call and hold a special meeting within 15 days from receipt of a written request. . .". On the face of the petition, the petitioners attempt to establish the date for the special meeting when the Tribal Constitution clearly says it's the Chairman's function to set the date. Therefore, I believe the petition is defective on that point.

It is undisputed here that the time and place for the meeting were set in the petition, and that notice of the meeting was posted by the petitioners. The question is whether these facts render the special meeting constitutionally defective.

Under Robert's Rules of Order, which the Board assumes the Community follows, the "call of a meeting" is written notification to the members of the time, place, and purpose of a special meeting. See, e.g., Robert's Rules of Order, (Rev'd Ed. 1970), at pages 78-79. Robert's Rules also state at page 79 that it is the secretary's responsibility to mail notice of a special meeting to the members (even though it may not be the secretary's responsibility to "call" the meeting).

Here, the Constitution provides that special General Council meetings are to be "called" by the Executive Council Chairman, and that notice of such meetings is to be posted, rather than mailed.

Appellants' interpretation of the Constitution as requiring the Chairman to set the time and place of a special General Council meeting is not unreasonable. It is not, however, the only reasonable interpretation. Although the Constitution states that the Chairman "shall call and hold" the special meeting, it does not specifically say that the time and place for that meeting can only be set by the Chairman. When notice of a special meeting is posted with the knowledge of the Chairman and without his/her objection, it is reasonable for both the tribal membership and the Department to assume that the Chairman acquiesced in the time and place set in the notice. There is no evidence or assertions that either appellant objected to the fact that the time and place for the meeting were set in violation of the Constitution until after the meeting was held, even though the tribal attorney's memorandum upon which they now base their claim of unconstitutionality predated both the September 26 posting and the October 17 meeting.

In addition, the fact that notice of the special meeting was posted by an individual other than the Chairman does not obviously conflict with the Constitution. The Constitution does not appear to assign the administrative function of actually affixing the notice to the appropriate posting place solely to the Chairman. The notice was posted with the knowledge of the Chairman, and without objection by either appellant. Again, it was reasonable to assume that the Chairman acquiesced in the posting of the notice.

The Board concludes that it is not clearly a violation of the Constitution for notice of a special General Council meeting to be posted by a person other than the Chairman, or for the time and place for the meeting to be established in the petition.

Appellants also contend that the timing of the special meeting violated the Constitution because the meeting was held more than 15 days from the date of the request. The special meeting was requested on September 26, 1992, and was held on October 17, 1992, 21 days later. The 15th day after September 26 was October 11.

The October 22, 1992, letter to the Superintendent from the Executive Council states at page 2:

[T]he meeting on October 17, 1992 took place more than 15 days after the petition was posted on the Tribal bulletin board. However, then Chairman Crawford had the date of October 10, 1992 booked with a weeklong meeting in Washington, D.C. which included a scheduled air flight to leave on the tenth. Therefore, the Executive Council's position in that the October 17, 1992 meeting was set for a date when the three accused [officers] would be present at the meeting and was properly called.

Appellants have not disputed this statement.

The apparent purpose of the constitutional provision is to require that special meetings be held in a timely manner, and not delayed to the detriment of those persons seeking the special meeting. It appears that here the constitutional provision met the realities of life; *i.e.*, scheduling conflicts. Although the special meeting was held more than 15 days after the request, it appears that it was held at the earliest possible date both to give appellants an opportunity to prepare for the meeting and to allow them to be present. Under these circumstances, the Board concludes that the fact that the special meeting was held more than 15 days from the date of the request is not fatal.

Finally, appellants argue that the meeting violated their due process rights under the Indian Civil Rights Act because they were not given the "full opportunity to respond to all of the charges against" them (Nov. 30, 1992, Statement of Reasons at 4). Appellants contend that their right to respond orally to the charges was either abridged or denied at the special meeting when they were intimidated into not exercising that right because of the way in which their initial attempts to respond were treated.

Appellants admit that they did not respond to the allegations in writing as is required by Article VIII, section 3(c), of the Constitution. They argue that the allegations were too vague for meaningful response. Even a statement that appellants could not respond because of the vagueness of the allegations would probably have sufficed for a written response. Appellants, however, did not make any attempt to respond in writing.

Although appellants now argue that they were intimidated into not responding orally at the General Council meeting, the record does not show, and appellants do not contend, that they made this objection, or any other, at the meeting. Article VIII, section 3(c), of the Constitution provides the accused official with the opportunity to respond orally to the allegations. The accused must, however, avail him or herself of this opportunity, or if he/she believes the right is being denied, must raise some objection. Otherwise, other persons are entitled to believe that the official has waived the right to an oral response. The Board concludes that it was reasonable to believe that appellants had waived their right to an oral response to the allegations against them.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the March 29, 1993, decision of the Minneapolis Area Director is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

I concur:

//original signed
Anita Vogt
Administrative Judge