INTERIOR BOARD OF INDIAN APPEALS

Harold John, et al. v. Acting Eastern Area Director, Bureau of Indian Affairs

29 IBIA 275 (08/07/1996)

United States Department of the Interior

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

HAROLD JOHN and RODERICK JOHN, Appellants,	: Order Affirming Decision as Modified
v.	: Docket No. IBIA 95-158-A
ACTING EASTERN AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	: August 7, 1996

Appellants Harold John and Roderick John seek review of a July 31, 1995, decision issued by the Acting Eastern Area Director, Bureau of Indian Affairs (Area Director; BIA), concerning the alleged resignation of Lovelin Poncho (Poncho) as Chairman of the Coushatta Tribe of Louisiana (Tribe). For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision as modified in this order.

Before July 24, 1995, the Coushatta Tribal Council consisted of Poncho, J.D. Langley, Beverly Poncho, and appellants. A Council meeting was held on July 24, 1995. All Council members were initially present. Apparently no other tribal employees, tribal members, or observers were present during the first part of the Council meeting. Beverly Poncho left the meeting early. During an apparently heated discussion over his firing of a tribal employee, Poncho left the meeting. Appellants and Langley continued the meeting, asking Brenda Shadwick, the tribal employee whom Poncho had fired, to attend. Among other things, the three remaining Council members adopted Resolution No. 95-23, which states that "the Tribal Council * * * accepts and acknowledges the voluntary resignation of its Chairman, Lovelin Poncho, as of July 24, 1995 and; that the Tribal Council acting in full agreement hereby this date transfers all authority, powers, functions, and responsibility to J. D. Langley, Vice-Chairman."

On July 24, 1995, appellants and Langley wrote to the Area Director, stating: "This correspondence is being sent to inform you that the Tribal Chairman, Mr. Lovelin Poncho, recently voluntarily resigned from his office. As such, he has no authorities of the Council. The Vice-Chairman will be acting in the Chairman's capacity."

The Area Director responded by letter dated July 31, 1995:

> This office has received no statement, either verbal or written, from Mr. Poncho concerning his intentions with regard to his position as recognized leader of the tribe.
>
> Please be advised that this office will continue to recognize Mr. Poncho as the individual encumbering the position of Chairman, Coushatta Tribe, until such time as we receive a written, signed, dated and notarized statement from Mr. Poncho expressly resigning his post. This office is not authorized to

> recognize any person as chairman of the tribe who did not win election to the post of chairman. Mr. Poncho won election to the post in an election called for the purpose of choosing the chairman and he is, therefore, entitled to recognition from this office until either he is unseated in a subsequent election, becomes incapacitated, or officially informs us of his resignation.

Appellants appealed to the Board. Filings were made by appellants, the Area Director, and Poncho. 1/

Appellants contend that Poncho resigned at the July 24, 1995, Council meeting, and that, after resigning, he left the meeting. They support this contention with a copy of the minutes of the meeting, affidavits from themselves and Shadwick, and Tribal Resolution No. 95-23.

In a July 31, 1995, letter to the Area Director, Poncho asserted:

> On July 24, 1995, a special meeting of the [Tribe] was held * * *. At the meeting * * * there was an argument * * * between myself and a Tribal Council Member over the firing of assistant administrator, Brenda B. Shadwick, who I had released from employment that morning prior to the meeting. I felt that the meeting could not proceed any further in an orderly manner and I left the meeting. In my opinion, at that point, the meeting was adjourned and terminated.
>
> However, minutes were prepared that reflect that I in fact resigned as Chairman and that Mr. J.D. Langley, Vice-Chairman, was then sworn in as Chairman of the Council.
>
> I have never formally nor informally resigned as Chairman of the Tribal Council nor do I intend to do so. I am carrying out my duties as Tribal Chairman and will continue to carry them out now and for my full elected term. The actions of the Council members were without my authority and they were acting entirely on their own.
>
> In fact, since the meeting, Mr. J.D. Langley, has signed an affidavit * * * that states I did not in fact resign and that the minutes and actions of those council members are incorrect.

(Letter at 1-2). Poncho attached a July 30, 1995, affidavit from Langley which stated:

> I further declare that minutes of that meeting were prepared that reflect that Chairman Lovelin Poncho resigned as

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1/ Although the attorney representing Poncho entered an appearance on behalf of Poncho, Beverly Poncho, and Langley, he stated that the brief which he filed was on behalf of Poncho.

> Tribal Council Chairman during the meeting and that I, affiant, was thereafter sworn in as chairman due to the resignation of Chairman Lovelin Poncho.
>
> I now further declare that the minutes of said special meeting of July 24, 1995 are erroneous and do not properly reflect the action of Chairman Lovelin Poncho that day. Chairman Lovelin Poncho did not resign as Tribal Chairman, but simply adjourned and left the meeting after an argument and disagreement with a council member over the firing of a tribal employee.

The question raised in this appeal is whether or not Poncho actually resigned at the July 24, 1995, Tribal Council meeting. Appellants contend that Resolution No. 95-23 is proof of Poncho's resignation, and that the Area Director erred in refusing to recognize that resignation and Langley's status as the Acting Chairman. They argue that there is no requirement in either Coushatta or Federal law that the resignation of a tribal council member or tribal official must be "written, dated, signed and notarized," and that the Area Director's imposition of such a requirement "is beyond his authority, violates the federal trust responsibility, and violates [tribal] sovereignty" (Memorandum of Points and Authorities in Support of Petition for Stay at 5).

Poncho contends that the resolution and appellants' actions were "a failed attempt at a coup on the chairmanship" (Memorandum in Opposition to Petition for Stay at unnumbered 2).

The administrative record shows that the Area Director did not receive Poncho's July 31, 1995, letter until August 4, 1995. It thus appears that the letter was not before the Area Director when he rendered his decision. The Board has no information concerning whether Poncho contacted the Area Director or Area Office in some other way before the Area Director issued his decision. However, even if the Area Director did not have this information before him, the fact remains that, when the decision was issued, two members of the Tribal Council alleged that Poncho had resigned, Poncho stated that he had not resigned, and a fourth Council member had recanted his statement that Poncho had resigned.

Under these rather unusual circumstances, the Board agrees with the Area Director's decision that Resolution No. 95-23 was not a sufficient basis for the Department to conclude that Poncho had resigned.

The Area Director further indicated that the only evidence of Poncho's resignation that he would accept was "a written, signed, dated and notarized statement from Mr. Poncho expressly resigning his post." The Board finds that such a statement would not only be acceptable proof of the fact of a resignation from office, but would also be the best proof. It cannot hold, however, that this is the only acceptable evidence of a resignation.

In situations such as the present one, in which the individual who is alleged to have resigned denies resigning, there must be a determination as to whether or not there was in fact a resignation. This is an intra-tribal

dispute. As the Board reiterated in Bucktooth v. Acting Eastern Area Director, 29 IBIA 144, 149 (1996), "[i]t is a well-established principle of Federal law that intra-tribal disputes should be resolved in tribal forums. This rule applies with particular force to intra-tribal disputes concerning the proper composition of a tribe's governing body." See also cases cited in Bucktooth. Therefore, this intra-tribal dispute as to whether or not Poncho resigned as Tribal Chairman should be resolved in a tribal forum.

The Coushatta Tribe does not have a constitution. Its Ordinance No. 1 establishes election procedures, but does not provide any procedures for resigning from office. The only tribal resolution or ordinance which has been cited as relevant to the issues raised in this case is Resolution No. 95-23. In their reply brief, appellants state that the Tribal Council has the responsibilities of a legislature, executive, and judiciary. Because this statement was not made at an earlier stage of the briefing, other parties have not had an opportunity either to agree with or to dispute the statement.

The Board concludes that, in the absence of a clear and explicit statement from Poncho that he has resigned, the Department should continue to recognize Poncho as Tribal Chairman until such time as the controversy concerning his resignation is resolved by an appropriate tribal forum (or until such time as Poncho is replaced as Chairman through a valid tribal election, whichever occurs first). If the Tribal Council is the appropriate tribal forum, the dispute should be resolved by the full Tribal Council--including Poncho. 2/ If the Tribal Council is not the appropriate forum, the full Tribal Council should identify the forum that is appropriate, or should identify who is responsible for determining the appropriate forum.

Whatever forum is determined to be the appropriate one, the proceedings should be conducted in a manner consistent with the Indian Civil Rights Act (ICRA), 25 U.S.C. § 1302 (1994). See, e.g., Naylor v. Sacramento Area Director, 23 IBIA 76 (1992); Greendeer v. Minneapolis Area Director, 22 IBIA 91 (1992) (BIA has the authority and the responsibility to decline to recognize a tribal action where it finds that the action is tainted by a violation of ICRA).

Evidence of a decision by the appropriate tribal forum resolving the dispute as to whether or not Poncho resigned would be acceptable proof in this matter. 3/

2/ Appellants suggest that Resolution No. 95-23, as an action of the Tribal Council, is dispositive of the issue here. However, when that resolution was enacted, this dispute had not yet arisen, because Poncho had not yet denied that he resigned from office. Thus, assuming arguendo that it is the proper forum for resolution of this intra-tribal dispute, the Tribal Council was clearly not acting in the capacity of a dispute-resolving body on July 24, 1995, when it enacted Resolution No. 95-23.

3/ Because of its conclusion that this dispute should be resolved in a tribal forum, the Board does not address the additional evidence appellants have presented on appeal in support of their position. This evidence should be presented to the tribal forum.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Acting Eastern Area Director's July 31, 1995, decision is affirmed as modified to state that Poncho's resignation may also be recognized by BIA upon evidence that the dispute concerning his alleged resignation has been resolved finally for the Tribe in the appropriate tribal forum and that that forum's determination is that Poncho resigned from the position of Tribal Chairman. 4/

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge

4/ It appears that on Sept. 30, 1995, an election was held seeking the re-call of Langley and appellant Roderick John. It further appears that John challenged this election through the Tribal Election Committee. This recall election is not part of this appeal, and so is not addressed.