



INTERIOR BOARD OF INDIAN APPEALS

Douglas Indian Association v. Juneau Area Director, Bureau of Indian Affairs

30 IBIA 48 (10/16/1996)

Related Board case:

27 IBIA 292

Reconsideration denied, 28 IBIA 40



United States Department of the Interior

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

DOUGLAS INDIAN ASSOCIATION

v.

JUNEAU AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 95-168-A

Decided October 16, 1996

Appeal from a decision concerning the service population under a P.L. 93-638 contract.

Affirmed.

1. Contracts: Indian Self-Determination and Education Assistance Act: Generally--Indians: Indian Self-Determination and Education Assistance Act: Generally

Bureau of Indian Affairs decisions determining service areas and service populations in Alaska for purposes of contracting under the Indian Self-Determination Act, 25 U.S.C. §§ 450-450n (1994), are based on the exercise of discretionary authority. Under this authority, the Bureau may balance the factors present in each situation in order to arrive at the best solution for that particular situation.

APPEARANCES: Robert P. Paulo and Louis Stevens for appellant; Roger L. Hudson, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for the Area Director; Thomas P. Schlosser, Esq., Seattle, Washington, for the Central Council of Tlingit and Haida Indian Tribes of Alaska.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Douglas Indian Association (appellant; DIA) seeks review of an August 14, 1995, decision of the Juneau Area Director, Bureau of Indian Affairs (Area Director; BIA), concerning the service population for a contract under the Indian Self-Determination Act (P.L. 93-638). ^{1/} The Area Director's decision was issued following the Board's remand in Douglas Indian Association v. Juneau Area Director (Douglas I), 27 IBIA 292, recon. denied, 28 IBIA 40 (1995). For the reasons discussed below, the Board affirms that decision.

^{1/} 25 U.S.C. §§ 450-450n (1994). All further references to the United States Code are to the 1994 edition.

Background

The background of this matter was described in Douglas I. Briefly, in May 1994, after withdrawing from the Southeast Alaska Self-Governance Compact administered by the Central Council of Tlingit and Haida Indian Tribes of Alaska (Central Council), appellant sought to enter into a P.L. 93-638 contract to provide certain services. In connection with its proposed contract, appellant requested that BIA credit it with a service population of 770, based upon the 1990 census figure for Alaska Natives residing on Douglas Island. At that time, BIA records showed appellant's membership to be 134.

On August 25, 1994, the Area Director declined appellant's request to include the entire Native population of Douglas Island in appellant's service population. However, based upon a number of considerations, he determined to include all Native residents, numbering 261, of the two most southerly voting precincts of Douglas Island.

Appellant appealed the August 25, 1994, decision to the Board. While the appeal was pending, Congress enacted legislation clarifying the status of the Central Council. Section 203 of the Act of November 2, 1994, 108 Stat. 4791, 25 U.S.C. § 1213, provides: "The Congress reaffirms and acknowledges that the Central Council of Tlingit and Haida Indian Tribes of Alaska is a federally recognized Indian tribe." Section 205, now codified at 25 U.S.C. § 1215, provides:

Other federally recognized tribes in Southeast Alaska shall have precedence over the Central Council of Tlingit and Haida Indian Tribes of Alaska in the award of a Federal compact, contract or grant to the extent that their service population overlaps with that of the Central Council of Tlingit and Haida Indian tribes [sic] of Alaska. In no event shall dually enrolled members result in duplication of Federal service funding.

In its April 18, 1995, decision, the Board stated:

This provision [i.e., 25 U.S.C. § 1215] clearly alters the premise under which the Area Director made his decision, because it requires that appellant be given precedence over the Central Council where the service populations of the two entities overlap. While it does not resolve the underlying issue in this appeal--appellant's service population must be determined before the extent of overlap is known--the provision does suggest that some of the factors taken into consideration by the Area Director are no longer relevant.

27 IBIA at 297. The Board therefore vacated the Area Director's August 25, 1994, decision and remanded the matter to him for reconsideration in light of the new legislation.

Following remand, the Area Director gave appellant and the Central Council an opportunity to submit any additional information they believed relevant. The Central Council submitted a response but appellant did not.

On August 14, 1995, the Area Director issued a new decision, holding that appellant's service population would be based upon its membership. He stated:

[I]n the future when there is a question about service area or service population this office will first look to see if there is an easily demonstrated historical geographical boundary and if not will then use a membership roll to make the determination on service population. Therefore in this instance I have determined the Douglas Indian Association service area will be its enrolled members.

(Area Director's Aug. 14, 1995, Decision at 3).

Appellant appealed this decision to the Board. Briefs were filed by appellant, the Area Director, and the Central Council.

Appellant has submitted two requests for expedited consideration. The requests were received by the Board on September 16, 1996, and September 20, 1996, and do not show service on the other parties. Although the Board normally does not consider filings which have not been served on other parties, the Board believes it is unlikely that other parties would be prejudiced by the Board's expedition of this appeal. The Board therefore grants expedited consideration.

Discussion and Conclusions

On appeal, appellant contends that its service population should encompass the Native population of Douglas Island, numbering 770, as well as appellant's members residing in Juneau. ^{2/} As it did in its earlier appeal, appellant submits a number of documents dating from the early 1940's when it was organized under the Indian Reorganization Act, 25 U.S.C. §§ 476, 477. Appellant contends that these documents show that it has an historical geographic boundary and that some of its original members resided in Juneau.

In his answer brief, the Area Director discusses the analysis he employed in determining appellant's service population. He states that most service population determinations in Alaska have been made on a geographic basis. The geographic approach makes sense in most of Alaska, he argues, "both because the other communities are sufficiently distant and isolated from one another to possess clear natural boundaries, and because the local Native population is made up of a majority or at least strong plurality of tribal members" (Area Director's Brief at 8). However, he contends, the geographic approach makes less sense in appellant's case because no more than 20 or 25 percent of the Native residents of Douglas Island, and an even smaller percentage of the Juneau-Douglas metropolitan area, are members of

^{2/} It is not clear when appellant first sought to include its members residing in Juneau in its service population. As evidenced by its May 23, 1994, letter, appellant originally sought only to include the 770 Native inhabitants of Douglas Island.

appellant. ^{3/} The Area Director concedes that his earlier decision, which was geographically based, was "a somewhat arbitrary exercise" and contends that, "[t]o return to it now, either by recognizing all Douglas Island Native residents as comprising the DIA service population, or by identifying a smaller service population residing in some other more circumscribed geographic boundary, as he did before, would at best only be marginally less arbitrary" (Id.).

The Area Director further contends that the membership approach to service population is appropriate in appellant's case because appellant's constitution does not define membership by residence but "rather by participation in an occupation, and voluntary or consensual affiliation" (Id. at 9) and because appellant presently claims as members individuals who do not reside on Douglas Island. ^{4/} He continues:

Two other important considerations support the selection of tribal membership as the defining criterion for inclusion in the DIA service population. The first is that the enrollment based approach is fully compatible with the language of 25 U.S.C. § 1215, insofar as that section explicitly prohibits duplication of Federal Service funding in the case of dually enrolled members. Compliance with that prohibition will be virtually assured by the use of the DIA membership roll as the basis for determining service population. The other, more important reason is that the underlying purpose of self-determination will be furthered by the use of the tribal membership criterion. This value will be served in two ways. First, all the Native persons served under the DIA contract will have the political right to a direct voice in the affairs of the tribal contractor. If all Douglas Island Natives were determined to be included in the service population, only 25% or less of those served would have a direct say in the governance of the contracting tribe. In contrast, since there are at least as many if not more, non-DIA members residing on Douglas Island who are Tlingits and Haidas, those people will have at least an indirect voice in the central Council's contract performance if they are not included in the DIA's service population. [Footnote omitted; emphasis in original.]

(Id. at 9-10).

Appellant contends that the Area Director's decision was erroneous in several respects. The Board will address appellant's principal arguments

^{3/} The Area Director notes that Douglas island is part of the Juneau-Douglas metropolitan area, which has a total Native population of 3,400 to 3,500. Id. at 4.

^{4/} The Area Director states that many Alaska tribes define their membership in terms of residence. He also states that, even though there are other IRA tribes in Southeast Alaska which, like appellant, define membership in terms of common bond of employment, these other tribes are unlike appellant in that they are based in relatively isolated communities. Id. at 2 n.1.

Appellant contends that the Area Director did not give proper consideration to 25 U.S.C. § 1215. The Board rejects this contention. The Area Director's decision recognized that appellant has precedence over the Central Council with respect to those Natives determined to be within appellant's service population. As noted in Douglas I, however, a determination of appellant's service population must be made before the extent of overlap with the Central Council's service population can be known. 27 IBIA at 297. Contrary to appellant's apparent belief, there is nothing in section 1215 which dictates any particular methodology for the determination of appellant's service population.

Appellant also contends that its enrolled membership is presently more than 200, rather than 136 as stated in the Area Director's decision. In his answer brief, the Area Director states that he "is prepared to give the DIA a contract to provide services to whatever tribal enrollment it can demonstrate" (Area Director's Brief at 11). It is clear from the Area Director's decision that he did not intend to limit appellant's service population to 136 but cited that figure simply because it was the enrollment figure available to him at the time he issued his decision.

Appellant argues that the Area Director erred in interpreting appellant's history. The Board finds that the relevant facts for purposes of this decision are those related to present, rather than past, circumstances. In any event, one of appellant's arguments in this regard--i.e., that some of appellant's original members resided in Juneau--actually supports the Area Director's decision to base appellant's service population upon membership and to include, therefore, appellant's members residing in Juneau.

Appellant objects to a discussion in the Area Director's decision concerning overlapping memberships of appellant, the Central Council, and the ANCSA (Alaska Native Claims Settlement Act) corporation Goldbelt, Inc. The Area Director concedes that this discussion was unclear and partly inaccurate. He further concedes that appellant's analysis of the relationship between these three entities is "probably more precise than the Area Director's" (Id. at 14). He contends, however, that the result of his decision would be the same under appellant's analysis. The Board finds that the Area Director's admittedly confusing discussion was unnecessary to his ultimate determination of appellant's service population. It further finds that the discussion to which appellant objects is harmless error in the context of the Area Director's actual decision.

[1] Appellant contends that the Area Director erred in basing its service population upon its membership when other service populations in Alaska have been based upon geography. In Douglas I, the Board stated:

The Board has recognized that the Area Director has some discretion in determining service areas and service populations in Alaska, where there are normally no clear boundaries between the territories of tribal governments. Kwethluk IRA Council v. Juneau Area Director, 26 IBIA 262 (1994). More generally, with regard to fund division under P.L. 93-638, the Board has recognized that, given the number of variables present in different contracting situations, "BIA must have leeway to balance the factors present

in each situation in order to arrive at the best solution for that particular situation." Kaw-Nation v. Anadarko Area Director, 24 IBIA 21, 30 (1993). [Footnote omitted.]

27 IBIA at 297. Thus, there is no requirement that the same methodology be employed in cases where the circumstances are markedly different. In this case, the Area Director has explained his reasons for departing from the normal geographically based, methodology for determining service population.

Where a BIA decision is based on the exercise of discretion, the Board does not substitute its judgment for BIA's. E.g., Honaghaahnii Marketing and Public Relations, Inc. v. Navajo Area Director, 18 IBIA 144, 148 (1990). If the BIA deciding official has explained the reasons for his/her decision, e.g., Quileute Tribe v. Portland Area Director, 23 IBIA 20 (1992), and the decision is reasonable, e.g., Absentee Shawnee Tribe v. Anadarko Area Director, 18 IBIA 156 (1990), the Board will affirm the BIA decision. Further, an appellant who challenges a discretionary decision bears the burden of showing that the BIA deciding official did not properly exercise discretion. Sault Ste. Marie Tribe of Chippewa Indians v. Minneapolis Area Director, 25 IBIA 236, 242 (1994).

The Board finds that, under the circumstances of this case, the Area Director reasonably based appellant's service population on its membership. Appellant has not shown legal error in the decision. Nor has it shown that the Area Director did not properly exercise discretion.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Area Director's August 14, 1995, decision is affirmed. 5/

//original signed

Anita Vogt
Administrative judge

I concur:

//original signed

Kathryn A. Lynn
Chief Administrative Judge

5/ Arguments made by appellant but not discussed in this decision have been considered and rejected.