



INTERIOR BOARD OF INDIAN APPEALS

Osage National Council v. Acting Muskogee Area Director, Bureau of Indian Affairs

30 IBIA 128 (12/11/1996)



United States Department of the Interior

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

OSAGE NATIONAL COUNCIL,
Appellant

v.

ACTING MUSKOGEE AREA DIRECTOR,
BUREAU OF INDIAN AFFAIRS,
Appellee

: Order Vacating Decisions and
: Remanding Cases in Docket
: Nos. IBIA 95-100-A and
: IBIA 95-103-A and Retaining
: Jurisdiction over Docket
: No. IBIA 96-37-A
:
: Docket Nos. IBIA 95-100-A
: IBIA 95-103-A
: IBIA 96-37-A
:
: December 11, 1996

On December 9, 1996, the Board of Indian Appeals (Board) received a motion for remand of the above cases, either in whole or in part, from the Osage National Council (appellant) and the Acting Muskogee Area Director, Bureau of Indian Affairs (Area Director). In Docket No. IBIA 95-100-A, appellant sought review of a February 15, 1995, decision interpreting appellant's constitution as it relates to contracting under P.L. 93-638, the Indian Self-Determination Act. In Docket No. IBIA 95-103-A, appellant sought review of decisions dated February 7 and March 17, 1995, concerning recognition of the Osage Tribal Court and the transfer of cases from the CFR court in Muskogee, Oklahoma, to the Osage Tribal Court. In Docket No. IBIA 96-37-A, appellant sought review of a December 8, 1995, decision relating to a P.L. 93-638 contract which provides funds for the Osage Tribal Court.

In support of the motion for remand, appellant and the Area Director state that appellant has submitted, or will shortly submit, to the Area Director certain bills which might resolve the Area Director's objections to appellant's law and order code. They state that because those objections formed the basis for the Area Director's decisions in Docket Nos. IBIA 95-100-A and IBIA 95-103-A, submission of the new bills appears to render moot the previous decisions. They therefore request that these two appeals be remanded in their entirety to the Area Director for further consideration.

Appellant and the Area Director state, however, that they have been unable to reach agreement concerning the Area Director's retention of a CFR court for resolving disputes regarding the Osage mineral estate, which is at issue in Docket No. IBIA 96-37-A. They request that the Board retain and decide only this issue in Docket No. IBIA 96-37-A, and that other issues be remanded to the Area Director. They further state that the issue of retention of the CFR court has been fully briefed and can be decided on the record as it now stands.

Appellant and the Area Director note that interested party the Osage Tribal Council "has not executed this motion because it believes that it has no interest in any issue pending in any of the above-styled cases with the exception of the retention of the [CFR court] for purposes of resolution of controversies regarding the Osage mineral estate. The Osage Tribal Council has no objection to the remand of the remaining issues pending in these appeals" (Motion at 2).

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, and the representations of appellant and the Muskogee Area Director, the Board vacates the Area Director's decisions at issue in Docket Nos. IBIA 95-100-A and IBIA 95-103-A, and remands these matters to the Area Director for further consideration in light of the bills which appellant has submitted, or will submit.

The Board retains jurisdiction over Docket No. IBIA 96-37-A. Without a complete review of that case, which it has not here undertaken, it is not possible for the Board to separate out specific issues which may go beyond the question of retention of the CFR court for controversies involving the mineral estate. The Board will, however, take this motion for remand into consideration in its decision on the merits in Docket No. IBIA 96-37-A. If, prior to issuance of a decision on the merits in Docket No. IBIA 96-37-A, the parties can identify specific issues in that case which they wish to have remanded, the Board will also entertain a renewed motion in the context of that appeal.

//original signed
Kathryn A. Lynn
Administrative Judge

//original signed
Anita Vogt
Administrative Judge