



INTERIOR BOARD OF INDIAN APPEALS

Esther Burris, et al.; and Nicolas Villa, Jr. v. Sacramento Area Director,
Bureau of Indian Affairs

33 IBIA 66 (11/25/1998)

Related Board case:
22 IBIA 194



United States Department of the Interior

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

ESTHER BURRIS ET AL.

and

NICOLAS VILLA, JR.

v.

SACRAMENTO AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 97-104-A, 97-111-A, 98-71-A, 98-72-A

Decided November 25, 1998

Appeals from decisions concerning the election of an Interim Tribal Council by the Ione Band of Miwok Indians.

Affirmed.

1. Indians: Tribal Government: Elections--Indians: Tribal Organization: Generally

When a tribal government dispute concerns the tribe's organization of its initial government, the Board of Indian Appeals will review tribal procedures more closely than it would in the ordinary tribal government dispute.

APPEARANCES: J. Russell Cunningham, Esq., Sacramento, California, for Esther Burris et al.; Robert W. Hargreaves, Esq., Rancho Mirage, California, for Nicolas Villa, Jr.; 1/ William M. Wirtz, Deputy Regional Solicitor, U.S. Department of the Interior, Sacramento, California, for the Area Director; John R. Shordike, Esq., and Curtis G. Berkey, Esq., Berkeley, California, for the Interim Council of the Ione Band of Miwok Indians.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellants Esther Burris et al. (Docket Nos. IBIA 97-104-A and 98-72-A); 2/ and Nicolas Villa, Jr. (Docket Nos. 97-111-A and 98-71-A) seek review of a January 31, 1997, decision issued by an Acting Sacramento Area Director, Bureau of Indian Affairs (BIA), and a January 23,

1/ Villa was represented by counsel in Docket No. IBIA 97-111-A and during preliminary proceedings in Docket No. IBIA 98-71-A. Since May 22, 1998, he has appeared pro se.

2/ This group of Appellants originally included Harold Burris, Sr., Esther Burris, Pamela Burris, Carol Boring, Jeanette Allen, and Harold Burris, Jr. Harold Burris, Sr., died in January 1998.

1998, decision issued by the Sacramento Area Director. ^{3/} Both decisions concerned a September 28, 1996, election held by the Ione Band of Miwok Indians (Band), in which an Interim Tribal Council was elected. For the reasons discussed below, the Board affirms the Area Director's decisions.

Background

On March 22, 1994, the then Assistant Secretary - Indian Affairs signed a letter which has been construed as a formal recognition of the Band or, alternatively, as a reaffirmation of an earlier recognition of the Band. ^{4/} The letter was addressed to Villa as "Chief, Ione Band of Miwok." It appears that, at the time the Assistant Secretary issued her letter, the Band consisted of two groups, one headed by Villa and the other headed by Harold Burris, Sr. Thus, the fact that the Assistant Secretary addressed her letter to Villa as "Chief" gave rise to questions as to whether she intended to recognize only Villa's group or whether, possibly, she intended to recognize Villa as leader of the entire Band. On July 14, 1994, and July 27, 1994, the Assistant Secretary issued memoranda addressing these and other questions. In her July 27, 1994, she made it clear that she intended to recognize "as one entity the entire group of Indians associated with the lands near the town [evidently Ione] in Amador County, California." In a September 15, 1994, letter to Villa, she stated:

The Department has not anointed you or Mr. Burris as the single leader of the Ione Band and it has not recognized two distinct entities. The BIA does recognize that the Ione Band of Indians is deeply divided among political factions and is providing technical assistance in helping these factions overcome their differences.

Assistant Secretary's Sept. 15, 1994, Letter at 1.

Pursuant to instructions in the Assistant Secretary's July 14, 1994, memorandum, the Area Director and the Superintendent, Central California Agency, undertook to sponsor discussions between the Villa and Burris groups for the purpose of developing a preliminary membership roll and establishing an interim governing body. Meetings were held on September 30, October 14, and November 21, 1994, the last one chaired by a Federal mediator. However, the two groups were unable to agree on either membership or leadership.

When the groups had not reached agreement by September 1995, the Deputy Commissioner of Indian Affairs appointed Jerry Cordova, a BIA employee from BIA's Central Office,

^{3/} Both officials are hereafter referred to as "Area Director."

^{4/} Both constructions are reflected in the administrative record. It is not necessary, for purposes of this appeal, to determine which construction is correct. All parties agree that, at the time of the events at issue here, the Band was a Federally recognized tribal entity.

who was experienced in tribal government matters, to assist the groups. ^{5/} In a September 20, 1995, memorandum, the Deputy Commissioner outlined the steps she believed should be taken by Cordova.

The first meeting called by Cordova took place on October 18, 1995. The second meeting was scheduled for November 7, 1995. On November 6, 1995, Villa informed the Area Director that he was "cancelling" the meeting on the advice of his attorney. Although Cordova and the Burris group appeared at the appointed place and time on November 7, and Cordova informed Villa by telefax that he was still welcome to participate, Villa evidently did not do so.

On December 20, 1995, Villa's group, by a vote of 13-0, removed him from his position of leadership and replaced him with Loren Hill. BIA recognized the change in leadership of the group, thereafter called the "Hill group."

By this time, settlement of internal Band disputes had become a goal in Ione Band of Miwok Indians v. Burris, CIV S-90-0993 LKK PAN (E.D. Cal.), a lawsuit filed in 1990. ^{6/} The Assistant United States Attorney (AUSA) representing the Federal defendants undertook to facilitate a settlement. In a February 25, 1996, letter to attorneys for the Burris group, the Hill group, and Villa, she outlined a detailed proposal made by BIA for the establishment of an Enrollment Committee and an Election Board. The Burris and Hill groups agreed to the proposal, and each selected its representatives to the Enrollment Committee and Election Board. In an April 18, 1996, order based upon the apparent agreement of the parties, Judge Nowinski approved the proposal and ordered that "[n]o person shall seek to influence the process of settling tribal membership or identifying a tribal government except through the above-described proceedings." Apr. 18, 1996, Order at 2.

^{5/} Cordova had participated in the Sept. 30, 1994, meeting and therefore had some familiarity with this dispute.

^{6/} This suit is described in the Findings and Recommendation re Dismissal issued on May 31, 1996, by Magistrate Judge Peter A. Nowinski:

"In 1990, a group of ten persons calling themselves the Ione Band of Miwok Indians, including Nicholas Villa Sr. and Nicholas Villa Jr. commenced this action claiming that about 40 acres in Amador County that the plaintiffs and defendants occupied is Indian Country. * * * The defendants * * *, including Harold E. Burris, crossclaimed and counterclaimed to partition the land; they claimed that the land was private property owned by plaintiffs and defendants as tenants in common. * * *

"No progress has been made toward resolving the competing claims initially because the plaintiff Indians could not proceed as individuals but only as a tribe, then, when the tribe obtained federal recognition and the tribe was substituted as plaintiff, because there was no tribal government authorized to pursue the tribe's claims."
Findings and Recommendation re Dismissal at 1-2.

For a brief discussion of earlier proceedings in this litigation, see Ione Band of Miwok Indians v. Sacramento Area Director, 22 IBIA 194 (1992).

On April 25, 1996, Villa filed an objection to the April 18, 1996, order. ^{7/} On May 13, 1996, Judge Nowinski vacated that order and on May 31, 1996, he recommended that Ione Band be dismissed "upon the ground that there is no tribal government authorized to initiate and conduct proceedings on behalf of an Indian tribe and without such participation there is no federal interest in the other parties' claims." Findings and Recommendation re Dismissal at 3-4. In an order dated August 28, 1996, and filed September 4, 1996, the District Court dismissed the case.

The Enrollment Committee met on April 25, 1996, at which time Judge Nowinski's April 18, 1996, order was still in effect. The meeting was chaired by Cordova and was attended by several members of the Hill and Burris groups, as well as the groups' attorneys.

Villa also attended the April 25, 1996, meeting, accompanied by his then attorney. A question was raised concerning separate representation for Villa and his new group on the Enrollment Committee and the Election Board. Cordova advised the attendees that, given the agreement then in place, the Hill and Burris groups would have to agree before Villa's new group could be allowed to participate on an equal footing with the existing groups. He also stated, however, that Villa was welcome at the meetings and entitled to participate as a member of one of the existing groups. Tr. of Apr. 25, 1996, Meeting at 133-137. ^{8/}

With respect to enrollment issues, it was decided at the April 25, 1996, meeting that membership in the Band would be based on descent from persons on a 1915 census of Ione Indians and the October 31, 1972, judgment in Villa v. Moffat, No. 8160 (Cal. Super. Ct. Amador Co.). ^{9/} The committee also developed recommendations, which it passed on to the Election Board, concerning a procedure and a timeframe for handling challenges to membership decisions.

^{7/} Although Villa had been advised that he was welcome to participate in the tribal enrollment/election process as a member of one of the two existing groups, (see AUSA's Feb. 25, 1996, letter at 4-5), he chose not to affiliate (or re-affiliate) with either group and instead attempted to form a third group. There are suggestions in the record that he may have acquired a few followers, on at least a temporary basis. It appears, however, that he most often acted on his own.

In April 1996, Villa evidently believed that he (or his new group) was entitled to participate in the tribal enrollment/election process on an equal footing with the Hill group and the Burris group.

^{8/} Villa's attorney stated his intent to take the matter of formal representation for Villa's new group to "the Department." Id. at 135. The record includes a May 7, 1996, letter from a different attorney, also representing Villa, to the Assistant Secretary, objecting to the enrollment/election process. The record does not include any response from the Assistant Secretary.

^{9/} This was a quiet title action in which the owners of a tract of land in Amador County, California, were determined to be "Nicolas Villa, Sr., Effie Burris, Esther Burris, Harold E. Burris, Barbara E. Hill, Fred Mike, Muriel Mike, Frank Pinion, Bernice Villa, Donald Villa, Glen Villa, William Villa, and other members of the Ione Band of Indians."

The Election Board met on May 8 and 9, 1996. The meeting was chaired by Robert Eben, a BIA employee from the Northern California Agency. 10/ The Election Board addressed membership criteria, agreeing with the Enrollment Committee that members must descend from persons on the 1915 census or the 1972 judgment, but deciding that prospective members must also demonstrate interaction with core Band members. In addition, the Election Board established a membership appeal procedure, determined that the Band's first governing body would be an Interim Council, and established rules for the election of the Interim Council. 11/

Working with lists submitted by the two groups, and assisted by BIA staff, the Enrollment Committee prepared a list of individuals potentially eligible for membership in the Band. The list was published in several local papers prior to May 24, 1996, together with notice of a June 1, 1996, public meeting and a description of procedures for appealing or challenging the inclusion or omission of persons from the membership roll. With respect to membership criteria, the notice stated:

The criteria chosen by the Enrollment Committee and the Election board for membership in the Ione Band is (1) lineal descendency from an individual listed on the 1915 Ione census or from one of the individually-named plaintiffs identified in the October 31, 1972, Judgement entered in Villa v. Moffat, No. 8160 (Cal. Super. Ct. Amador County) ("1972 judgement"), (2) possess Miwok blood and (3) consistent interaction with the tribe through cultural contacts with residents of the 40-acre tract that was the subject of the 1972 judgement.

Examples of acceptable documentation to establish lineal descendency include but are not limited to birth certificates, death certificates, and roll numbers from one of the California Indian Judgement fund rolls maintained by the Bureau of Indian Affairs. Acceptable documentation to establish interaction with the tribe will be written verification of cultural contacts by three (3) descendants of the 1915 census or someone listed on the 1972 judgement, each of whom is 60 years of age or older.

At the June 1, 1996, public meeting, the Enrollment Committee and the Election Board explained the procedures for appeals and challenges concerning membership and the procedures for election of the Interim Council. Questions and comments were taken from those in attendance.

10/ Eben served as Chair of the Election Board, which also included two members from the Hill group and two members from the Burriss group. Eben was to vote only in the case of a tie. He was never required to vote.

11/ Villa was present at the beginning of the May 8, 1996, meeting but left soon thereafter, stating that he and his group were "withdrawing from this process." Tr. of May 8, 1996, Meeting at 68.

The Election Board met on June 29 and 30, 1996, to consider membership appeals. A further meeting was held on August 23, 1996, for the purpose of considering objections that had been made to the enrollment procedures by counsel for the Burris group.

The Election Board held a public meeting on September 6, 1996, at which it described its handling of membership appeals and explained procedures for the upcoming election. It also responded to a number of questions and comments from those in attendance.

The election took place on September 28, 1996. Those elected to positions on the Interim Council were: Kathy Ramey, Chairperson; Matthew Franklin, Vice Chairperson; Lisa Pulskamp, Secretary; Karen Green, Treasurer; Johnnie Jamerson, Member at Large; and William Franklin, Sr., Elder.

The Superintendent acknowledged the election results in an October 8, 1996, letter to Ramey.

On December 11, 1996, counsel for the Burris group wrote to the Area Director, alleging that the Superintendent had failed to act on a challenge made by Carol Boring ^{12/} to BIA's recognition of the election results. The Area Director responded by letter of January 31, 1997. He stated that both the enrollment process and the election were tribal actions and that Ms. Boring should make her complaint to the Band. The Burris Appellants appealed the Area Director's letter to the Board. The Board received their notice of appeal on March 3, 1997.

In a document dated March 26, 1997, and received by the Board on March 31, 1997, Villa stated that he intended to appeal to the Board from the Area Director's January 31, 1997, letter and, simultaneously, to appeal to the Area Director from the Superintendent's October 8, 1996, letter to Ramey. The Board accepted Villa's appeal from the Area Director's January 31, 1997, letter as timely, because the Area Director's letter had not provided appeal information (see 25 C.F.R. § 2.7) but stayed proceedings in order to allow the Area Director to issue a decision in Villa's appeal to him. The Board also stayed proceedings in the appeal filed by the Burris Appellants.

When it stayed proceedings, the Board strongly urged the parties to attempt to settle the matter themselves. In an effort to assist the parties in this regard, the Area Director arranged for mediation to be conducted by a Federal mediator. By this time, however, another lawsuit had been filed in Federal court, Burris v. Villa, CIV-S-97-0531 DFL JFM (E.D.Cal.), and Villa had filed a cross-complaint in that case concerning the tribal government issues then pending before the Area Director. ^{13/} Thus, although the mediator appointed by the Area Director initiated

^{12/} Carol Boring was a member of the Election Board.

^{13/} This action appears to have begun as an action to partition the 40-acre tract in Amador County. The lead defendant is Nicolas Villa, Sr. It was Nicolas Villa, Jr., however, who filed the cross-complaint.

mediation proceedings, he quickly concluded that, given the pending Federal court action, it would be premature to attempt resolution through mediation.

Upon the failure of mediation, the Area Director concluded that, in order to maintain a government-to-government relation with the Band, it was necessary to recognize the Interim Council elected on September 28, 1996. He therefore issued a decision on January 23, 1998, in which he affirmed the Superintendent's October 8, 1996, letter.

Both Villa and the Burris Appellants appealed the Area Director's January 23, 1998, decision to the Board. Villa stated in his notice of appeal that he believed the District Court had jurisdiction over the dispute. The Board therefore requested statements from all parties concerning the relation between these appeals and the Federal court litigation.

On March 25, 1998, following receipt of the parties' statements, the Board stayed proceedings and requested the Area Director to advise it when the District Court determined whether or not it would proceed with the case before it.

On April 2, 1998, the District Court stayed proceedings before it in order to allow the Board to proceed with these appeals. The Board learned of the Court's order on May 11, 1998, when it received a filing from Villa. The Board then issued an order for the administrative record. On June 1, 1998, following receipt of the record, the Board established a briefing schedule. On July 20, 1998, it denied the Interim Council's motion for expedited briefing but granted expedited consideration. Briefs have been filed by the Burris Appellants, Villa, the Interim Council, and the Area Director. 14/

Discussion and Conclusions

[1] In the ordinary tribal government dispute, BIA and this Board must proceed cautiously, taking care to avoid infringing upon tribal sovereignty, even in cases where BIA is required to take some action in furtherance of the government-to-government relationship. E.g., Wadena v. Acting Minneapolis Area Director, 30 IBIA 130 (1996). However, a somewhat more active role for BIA and this Board is appropriate, and often necessary, when a tribe is organizing its initial government. See Alan-Wilson v. Sacramento Area Director, 30 IBIA 241, 252 (1997). Accordingly, the Board undertakes here to review Band procedures more closely than it normally would. Even so, the Board does not presume to second-guess substantive decisions made by the tribal groups authorized to make those decisions)) i.e., the Band's Enrollment Committee and Election Board.

14/ A number of documents have been filed with the Board subsequent to the completion of briefing. The Board finds it unnecessary, for purposes of deciding the issues on appeal here, to consider these additional filings.

Burriss Appeal

The Burriss Appellants object to both the Band's enrollment procedure and its election procedure. With respect to enrollment, they contend that the Election Board failed to investigate allegations that a number of applicants had obtained certifications from two elders of the Band under false pretenses. Intertwined with this argument is an argument that appeal times were too short, as was the time in which the Election Board had to investigate objections.

Counsel for the Burriss group 15/ wrote to the AUSA on July 31, 1996, with a number of complaints about enrollment procedures. Attached to the attorney's letter were statements signed by elders Wilma Moman and Elmer Moman. The statement signed by Wilma Moman reads: "I Wilma L. Moman wish to inform the Election Committee of the Ione Band of Miwok Indians that the 30-100 appeal forms for the Jamerson family members bearing my signature were misrepresented to me and I signed under pressure." The statement signed by Elmer Moman reads:

I Elmer Moman wish to inform the Membership Committee of the Ione Band of Miwok Indians that it is suspected by many potential members of this Tribe that the appeal forms signed by myself and two others for the Jamerson family may have been obtained fraudulently and copies were made without consideration for or consent of the involved parties.

It should also be noted that I have no personal knowledge of the Jamerson family having had continued contact with the families of the Ione Band of Miwok Indians that I have maintained contact with over the last 83 years of my life.

The AUSA referred the attorney's letter to the Election Board, which considered the complaints at its August 23, 1996, meeting. After considerable discussion, the Board concluded that the elders' original signatures would stand. Among other things, the Election Board members observed that the attorney's complaint was not made until late in the enrollment/election process and that the elders' statements alleging pressure might themselves have resulted from pressure.

The Burriss Appellants refer to the elders' statements as "affidavits" and "declarations." The statements, however, were not made under oath or under penalty of perjury. The Election Board members, while not speaking in legal terms, clearly understood that the elders' later statements were not inherently any more credible than were the statements they had made through their original signatures. Further, as the Area Director and the Interim Council point out in this appeal, both of the later statements were vague and unsupported.

15/ This was the same attorney who represents the Burriss Appellants in this appeal. The Board presumes that the present Burriss Appellants are leaders of the Burriss group and do not necessarily constitute the entire Burriss group.

Upon review of the transcript of the Election Board's August 23, 1996, meeting, the Board finds that the Election Board took the complaint seriously, gave it careful consideration, and made a reasoned decision.

Although the Burris Appellants now object that appeal times were too short, the times were agreed to by the Burris group's representatives. Further, even though the agreed-to procedures did not specifically provide for the consideration of complaints such as the one submitted by counsel for the Burris group, the Election Board undertook to consider it. The fact that the Election Board rejected the complaint may easily be attributed to the inadequacy of the complaint itself, for which the Burris group has only itself to blame, rather than to any shortness of time or to any fault on the part of the Election Board. The Board finds no reason to fault the Election Board's decision.

The Burris Appellants next argue that the Burris group was deprived of fair representation on the Election Board. They allege that they discovered in the summer of 1996 that two of the group's representatives to the Election Board, Randy Yonemura and Laura Yonemura, 16/ had switched allegiance to another group. They allege further that BIA "prohibited Burris Group's leadership and counsel to attend [sic] the [Election Board's] meetings, discouraged Burris Group's representatives from fully disclosing the substance of their discussions, and wrongfully ignored Burris Group's replacement of its defecting representatives on the [Election Board]." Burris Opening Brief at 8.

The Burris Appellants do not support their allegations. Of the record documents they cite in this part of their brief, only one even mentions the issue. That document is an October 3, 1996, (*i.e.*, post-election) letter from counsel for the Burris group to the Deputy Regional Solicitor, which makes a number of complaints and alleges, *inter alia*, that, when the Burris group "attempted to replace Randy Yonemura and Laura Yonemura, [BIA] and the [Election] Board refused to acknowledge the change." Oct. 3, 1996, Letter at 2. Like the allegation made in this appeal, the allegation in the October 3, 1996, letter was unsupported by any evidence. Further, in both complaints, the allegations are extremely vague. For instance, both fail to include any information regarding when the alleged replacements were chosen, who they were, or when and how they were presented to BIA and/or the Election Board.

The transcripts of Election Board meetings indicate that Randy Yonemura and Laura Yonemura performed their duties conscientiously. The Burris Appellants do not show that the presence of these two individuals on the Election Board resulted in harm to the Burris group or anyone else.

The Board finds that the Burris Appellants have failed to support their allegations concerning the Burris group's representatives on the Election Board. It further finds that those unsupported allegations provide no basis for overturning the Area Director's decisions.

16/ The Burris group's primary representatives were Randy Yonemura and Carol Boring. Laura Yonemura served as an alternate.

Next, the Burriss Appellants argue that the election results were tainted because four members of the Election Board improperly ran for office. They identify the four members as Kathy Ramey, Randy Yonemura, Lisa Pulskamp, and Karen Green and contend that, "[p]ursuant to rules established by the Election [Board], no actual or alternate member of the Election [Board] was or is eligible to run for or hold office in the interim tribal government." Burriss Opening Brief at 9. Conceding that Randy Yonemura, Lisa Pulskamp, and Karen Green each resigned from the Election Board upon being nominated for office, the Burriss Appellants contend that the resignations did not solve the problem.

The Interim Council has a different understanding of the Election Board rule. It contends: "[T]he rule was that no sitting member of the Election [Board] could stand for election. However, there was no rule and nothing improper about resigning from the Election [Board] in order to run for elective office." Interim Council Answer Brief at 16. The Interim Council also argues that Kathy Ramey was not a member of the Election Board and so did not need to resign.

No party has produced a written version of the Election Board rule. Clearly, there are differing recollections of its requirements. The transcript of the September 28, 1996, election shows that the majority of the Election Board members understood the rule as described here by the Interim Council. Tr. at 33-37. The transcript also shows that the matter was discussed openly by the voting members of the Band and that the election thereafter proceeded without objection. *Id.* At the time of the election, the voting members of the Band constituted, in essence, the Band's governing body, or General Council, because at that point the Band had not yet elected a representative governing body.

Given the recollection of the majority of the Election Board members as to the content of the rule, and the decision of the voting members of the Band to proceed with the election with that understanding of the rule, the Board concludes that the rule, as described here by the Interim Council, was the rule chosen by the Band to govern the September 28, 1996, election. Therefore, the Board concludes that it was proper under tribal law for members of the Election Board to run for elective office provided they first resigned from their Election Board positions.

Kathy Ramey was identified as a member of the Election Board in a March 8, 1996, letter from the AUSA to counsel for the Burriss group, the Hill group, and Villa. However, she was not listed as a member of the Election Board in the transcript of the May 8, 1996, Election Board meeting. *See* Tr. of May 8, 1996, Election Board Meeting at 2. Nor was she identified as a member during the formal introductions of Election Board members at the June 1, 1996, public meeting. *See* Tr. of June 1, 1996, Public Meeting at 32. 17/

17/ The transcript shows that Kathy Ramey was present at the June 1, 1996, meeting and so presumably would have been introduced as an Election Board member had she been one on that date. Moreover, an absent Election Board member (Carol Boring) was named in the introductions, indicating that the introductions were intended to include all Election Board members as of that date.

The transcripts of the Election Board's meetings of June 29-30, 1996, and August 23, 1996, show that Ramey was present at the meetings. They also show, however, that she did not participate in the Election Board's votes. See, e.g., Tr. of June 29-30, 1996, meeting at 35, 36, 37, 39, 41. The transcripts are consistent with Ramey's statement in her July 16, 1996, letter to BIA employee Dorson Zunie. In that letter she stated: "My only involvement with the Election Board was to assist the Board members. Lisa Pulskamp, Karen Green, Carol Boring, and Randy Yonemura are the Board Members who made all the decisions and to the best of my knowledge agreed on every issue that arose." Ramey's July 16, 1996, Letter at 1. The letter goes on to describe Ramey's attendance at meetings and her other activities on behalf of the Election Board. Nothing in the letter indicates that she served in any capacity other than an assistant to the Election Board.

Finally, Ramey was not listed as a member of the Election Board in the transcript of the September 28, 1996, election, see Tr. of Sept. 28, 1996, Election at 2, and did not participate in the proceedings as a member of the Election Board.

The Board finds that, even if Ramey was initially a member of the Election Board, as indicated in the AUSA's March 8, 1996, letter, she was not a member on September 28, 1996. The Board therefore concludes that there was no need for Ramey to resign from the Election Board prior to running for elective office.

In a related argument, the Burris Appellants contend that the election results were invalid because they were not certified by the Election Board and/or because they were in conflict with a certification signed by Carol Boring on October 15, 1996. Boring stated in her certification that she was the sole remaining member of the Election Board. She further stated that she believed that, under Election Board rules, Ramey, Green, Pulskamp, and Randy Yonemura had been ineligible to run for office. Based upon her interpretation of the rules, she certified that those elected to office were: Harold Burris, Chairperson; Matthew Franklin, Vice Chairperson; Jeanette Innerrarity, Secretary; Tracy Tripp, Treasurer; Johnnie Jamerson, Member at Large; and William Franklin, Sr., Elder.

The Burris Appellants submit a declaration from Carol Boring, in which she states that, on October 3, 1996, Dorson Zunie asked her to certify the election results. Because the Area Director does not deny Boring's statement, the Board assumes, for purposes of this decision, that the statement is accurate. The Board observes, however, that Zunie's request to Boring is not determinative of the question whether certification of the election was required as a matter of tribal law.

Both the Area Director and the Interim Council contend that there was no requirement for certification of the election in the rules established for the September 28, 1996, election. Further, the Area Director notes that BIA representatives were present at the election, as well as at most of the preceding meetings, and that there was a transcript of the election. Therefore, he contends, BIA had sufficient documentation to rely upon in recognizing the results of the election.

The Interim Council also contends that Boring had no authority, on her own, to issue an interpretation of the Election Board rule or to certify election results based upon her personal interpretation of the rule.

As evident from the discussion above, Boring's interpretation of the Election Board rule is in conflict with the interpretation of the majority of the Election Board members. It is also in conflict with the decision of the tribal voters to proceed with the election based upon the interpretation expressed by the majority of the Election Board members. Accordingly, the Board concludes that Boring's interpretation was not in accord with tribal law.

The Burris Appellants produce no evidence that certification of the election was required under the rules adopted for the September 28, 1996, election. The Board finds therefore that the Burris Appellants have failed to show that certification of the election was required.

The Board further finds that the Burris Appellants' allegations concerning the September 28, 1996, election provide no basis for overturning the Area Director's decisions.

Villa Appeal

The main premise of Villa's appeal is that the entire enrollment/election process was unlawful because the Assistant Secretary, in her March 22, 1994, letter, "confirmed the status of the Ione Band of Miwok Indians as a tribe that was already recognized, that already had a defined population, and that already had a functional government organized under a tribally-ratified 'permanent' constitution." Villa Reply Brief I at 4. ^{18/} Villa's filings indicate that he believes the Assistant Secretary recognized him as the leader of the Band.

Villa ignores the fact that the Assistant Secretary, in her July 14 and July 27, 1994, memoranda to the Area Director and her September 15, 1994, letter to Villa, made it clear that she had not recognized Villa as the leader of the Band and that she considered the preparation of a membership roll and the formation of a tribal government to be tasks remaining to be accomplished. Thus, to the extent decisions were made not to recognize Villa as the Band's leader, not to recognize any existing tribal government, and not to recognize Villa's membership roll as controlling, those decisions were made by the Assistant Secretary)) not, as Villa's argument suggests, by the Area Director acting on his own initiative.

The main part of Villa's appeal is thus a challenge to decisions made by the Assistant Secretary. Decisions made by the Assistant Secretary are final for the Department of the Interior, and the Board therefore lacks authority to review them. E.g., Kawerak, Inc. v. Assistant Secretary - Indian Affairs, 28 IBIA 66 (1995), and cases cited therein. Accordingly, the Board lacks jurisdiction over Villa's argument that BIA erred in not recognizing him as the Band's leader,

^{18/} Villa filed two reply briefs, replying separately to the answer briefs filed by the Interim Council and the Area Director.

in not recognizing a pre-existing tribal government, and in not recognizing Villa's membership roll as controlling. 19/

Villa also objects to the enrollment/election process. He suggests that he was somehow precluded from participating in the process, either by BIA or by the Enrollment Committee and the Election Board. This was clearly not the case, however. Even after his group removed him as its leader, he was specifically invited to participate in the enrollment/election process. See, e.g., AUSA's Feb. 25, 1996, Letter; Cordova's Statement at the Apr. 25, 1996, Enrollment Committee Meeting, Tr. at 136-37. In fact, Villa attended and participated actively in the April 25, 1996, meeting. While he later withdrew from the process, Tr. of May 8, 1996, Election Board Meeting at 68, he did so on his own initiative.

Villa produces no support, and there is none in the record, for his contention that he was excluded from the enrollment/election process. To the contrary, the record shows clearly that Villa was given every opportunity to participate but, for the most part, chose not to do so. 20/

Villa alleges that his right to due process was violated by various entities, including his own group when it removed him from his position of leadership. E.g., Villa Opening Brief at 4; Villa Reply Brief II at 9-10. However, his allegations are extremely vague and are not supported by any evidence. The Board therefore finds that Villa has failed to show that his right to due process was violated.

The Board further finds that Villa has not shown any basis for overturning the Area Director's decision.

19/ Among the voluminous materials submitted by Villa with his opening brief is a Nov. 7, 1996, letter to him from the Assistant Secretary (Document No. 57 in an unlabeled file), regarding the Sept. 28, 1996, election. This letter could be construed as a decision by the Assistant Secretary to recognize the results of the election. If so construed, the letter would make these appeals moot. However, no party to this appeal argues that the letter should be construed as a decision. In fact, no party even discusses that letter.

It is not at all clear that the Assistant Secretary intended her letter to be a decision. Under the circumstances present here, the Board declines to construe the Assistant Secretary's Nov. 7, 1996, letter to Villa as a final Departmental decision to recognize the results of the Sept. 28, 1996, election.

20/ After Villa's departure on May 8, 1996, Election Board members observed that he had adopted a practice of participating initially in tribal proceedings but then opting out when he did not like the way things were going, often to attack the proceedings from outside, such as through a filing in Federal court. Tr. of May 8, 1996, Meeting at 113-116. The record in this appeal supports that observation.

The Board has thus found that neither Appellant has shown any grounds for overturning the Area Director's January 31, 1997, and January 23, 1998, decisions. The Area Director's decisions are therefore entitled to be affirmed on the basis that Appellants have failed to show error in the decisions.

Further, upon a thorough review of the record, the Board finds that BIA properly balanced its responsibilities with regard to the Band's organizational efforts, on the one hand, and its obligation to respect the right of Band members to make their own decisions concerning Band membership and government, on the other. Although BIA played an active role in the Band's enrollment/election process, it also acted with appropriate restraint, offering guidance where it was needed but leaving decisions to the tribal committees. Moreover, it is abundantly clear that, had BIA not provided the strong support it did, the Band would not have succeeded in organizing at all. 21/

The record shows that those who served on the Enrollment Committee and Election Board performed admirably. It is clear that those individuals, as well as the BIA employees who assisted them, took their responsibilities seriously, putting in long hours and serving with the greater interests of the Band in mind. Given the deep rifts in the Band, it was not an easy task to bring the enrollment/election process to completion.

Finally, the record shows that, despite the animosities of some members of the Band toward each other, there are a number of individuals, including those who were elected to office on September 28, 1996, who are committed to helping the Band move forward. Thus, it clearly seems possible for the Band to succeed in establishing a stable government, with all the benefits that would accrue from that accomplishment. Appellants now have the opportunity to join in that positive effort. The Board urges them to do so.

21/ Given the extensive administrative record in this case, the Board has had considerably more information available to it than it normally has in a tribal government dispute. The record here includes transcripts of the preliminary meetings of Sept. 30, 1994, Oct. 14, 1994, Nov. 21, 1994, and Oct. 18, 1995; the Enrollment Committee meeting of Apr. 25, 1996; the Election Board meetings of May 8-9, 1996; June 29-30, 1996; and Aug. 23, 1996; the public meetings of June 1, 1996, and Sept. 6, 1996; and the election of Sept. 28, 1996.

