



INTERIOR BOARD OF INDIAN APPEALS

Hannahville Indian Community v. Minneapolis Area Education Officer and
Area Supervisory Contract Specialist, Bureau of Indian Affairs

34 IBIA 252 (03/02/2000)

Related Board cases:

34 IBIA 4

37 IBIA 35

Related Indian Self-Determination Act case:

Administrative Law Judge decision, 04/23/1999



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
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HANNAHVILLE INDIAN	:	Order Denying Petition for Interlocutory
COMMUNITY,	:	Appeal
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 97-143-A
MINNEAPOLIS AREA EDUCATION	:	
OFFICER and AREA SUPERVISORY	:	
CONTRACT SPECIALIST, BUREAU	:	
OF INDIAN AFFAIRS,	:	
Appellee	:	March 2, 2000

On February 25, 2000, the Board of Indian Appeals (Board) received a Motion Seeking Permission for Interlocutory Appeal and Appeal from the Minneapolis Area Education Officer and Area Supervisory Contract Specialist, Bureau of Indian Affairs (collectively, BIA). The motion was filed with the Board in response to an oral ruling by Administrative Law Judge William S. Herbert which denied a motion filed by BIA in the course of the hearing which the Judge is holding in this matter. BIA's motion opposed Appellant Hannahville Indian Community's proposed "expert" testimony from two attorneys on a question of law and sought to exclude "pre-filed testimony" from the two attorneys. BIA filed its present motion with the Board after Judge Herbert orally certified the issue for interlocutory appeal under 43 C.F.R. § 4.28.

As the Board noted in an October 27, 1999, order which denied a petition for mandamus in this case, "[t]his proceeding is governed by appeal regulations set out in 25 C.F.R. Part 900, and specifically 25 C.F.R. §§ 900.150-900.176." Part 900, which was the product of a negotiated rulemaking, deals comprehensively with the Indian Self-Determination Act (ISDA), 25 U.S.C. §§ 450-450n (1994). 25 C.F.R. §§ 900.150-900.176 deal comprehensively with administrative appeals from ISDA decisions. As was also the case with the petition for mandamus, nothing in Part 900 provides for interlocutory appeals.

The only authority for interlocutory appeals to the Board is 43 C.F.R. § 4.28, which is part of 43 C.F.R. Part 4, Subpart B, the general regulations of the Office of Hearings and Appeals. Nothing in Part 900 indicates that any of these general regulations were intended to be incorporated into Part 900.

In a recent case involving a different set of comprehensive BIA program regulations (25 C.F.R. Part 83, concerning Federal acknowledgment of Indian tribes), the Board rejected an argument that an appeal could be made to the Board under 25 C.F.R. Part 2 and the Board's general appeal regulations in 43 C.F.R. Part 4, Subpart D, when the BIA program regulations contained comprehensive appeal provisions setting out a different appeal procedure. In re Federal Acknowledgment of the Golden Hill Paugussett Tribe, 34 IBIA 18, recon. denied, 34 IBIA 55 (1999). This decision established the principle that provisions from general appeal regulations may not be impliedly incorporated into, or applied as an alternative or addition to, specific appeal regulations in BIA program regulations when those specific appeal provisions are intended to deal comprehensively with appeals concerning the particular subject matter concerned.

As noted above, the comprehensive administrative appeal provisions in 25 C.F.R. Part 900 do not authorize interlocutory appeals. The Board sees no reason to depart from the principles established in Golden Hill in order to read the general appeal regulations of the Office of Hearings and Appeals into the specific program regulations under 25 C.F.R. Part 900.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, BIA's motion for interlocutory appeal is denied.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge