



INTERIOR BOARD OF INDIAN APPEALS

Cahto Tribe of the Laytonville Rancheria v. Pacific Regional Director,
Bureau of Indian Affairs

38 IBIA 244 (12/19/2002)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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CAHTO TRIBE OF THE	:	Order Vacating Decisions
LAYTONVILLE RANCHERIA,	:	
Appellant	:	
	:	
v.	:	Docket No. IBIA 01-55-A
	:	
PACIFIC REGIONAL DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	December 19, 2002

This is an appeal from a December 19, 2000, decision of the Pacific Regional Director, Bureau of Indian Affairs (Regional Director; BIA), concerning a disenrollment action taken by the Cahto Tribe of the Laytonville Rancheria (Tribe). For the reasons discussed below, the Board vacates the Regional Director's decision, as well as the February 18, 2000, decision on the same subject issued by the Superintendent, Central California Agency, BIA.

Membership in the Tribe is governed by Article III of the Tribe's Articles of Association. 1/ Article III.A provides that persons eligible for membership are:

1. All living persons listed on the official census of the Laytonville Rancheria as of October 31, 1944.
2. All living descendants of persons listed on the official census of the Laytonville Rancheria as of October 31, 1944, provided such descendants possess at least one-fourth (1/4) degree California Indian blood.

Paragraph 3 of Article III.A provides:

Persons who meet the requirements of Article III.A.1 and Article III.A.2 shall be ineligible for membership if they have been affiliated with any other

1/ The Articles of Association were adopted by the Tribe on Feb. 12, 1967, and approved by the Commissioner of Indian Affairs on July 21, 1967.

tribe, group or band to the extent of (a) being included on a formal membership roll, (b) having received an allotment or formal assignment of land, (c) having been named as a distributee or dependent of a distributee in a reservation distribution plan.

In a special meeting held by the Tribe's General Council on September 19, 1995, 22 members of the Sloan/Hecker family were removed from the Tribe's membership roll on the grounds that they "have been affiliated with other tribes by being included on formal membership rolls and/or * * * have been a distributee of a reservation distribution plan, namely the Hoopa/Yurok settlement." Minutes of Sept. 19, 1995, Meeting at 2. By letter of September 29, 1995, an attorney representing the Tribe sought BIA recognition of the action taken. The Superintendent responded on October 4, 1995, stating that the matter was internal to the Tribe and that he had therefore referred it to the Tribe's Executive Committee. In letters written in 1997 to one of the disenrolled individuals, the Superintendent and the Regional Director continued to take the position that the matter was internal to the Tribe.

However, on July 29, 1999, after receiving further complaints from disenrolled individuals, the Superintendent wrote to the Tribe, stating that BIA disagreed with the Tribe's apparent interpretation of the Hoopa-Yurok Settlement Act, 25 U.S.C. §§ 1300i-1300i-11, as it related to the Tribe's membership requirements. He asked the Tribe to reconsider its disenrollment decision and stated: "Our concern with this matter does not challenge the tribal right to deal with membership issues but rather the premise by which alleged disenrollment has taken place. Our concern is with the proper interpretation of federal law." Superintendent's July 29, 1999, Letter at 2.

Subsequently, BIA met and corresponded with tribal officials concerning the matter. The Tribe agreed to attempt an internal resolution. On January 31, 2000, a tribal attorney wrote to the Superintendent, stating that the Tribe's attempts had proved unsuccessful. He continued: "The Tribe now requests that the dispute be referred to a formal mediation service to give the parties a final opportunity to see if a compromise can be reached. The Tribe is particularly interested in seeing whether an amended constitution can be agreed upon." Tribal Attorney's Jan. 31, 2000, Letter at 1.

On February 18, 2000, the Superintendent issued a decision in which he acknowledged receipt of the tribal attorney's January 31, 2000, letter but did not respond to the attorney's mediation request. He repeated his earlier statements that BIA does not normally become involved in internal tribal matters, especially with respect to tribal enrollment. However, he then stated: "We do not recognize the tribe's decision to disenroll members of [the Sloan/ Hecker family] based upon what we view as the tribe's misinterpretation of the Hoopa-Yurok Settlement Act, a federal law, relative to the tribe's Articles of Association, as amended." Superintendent's Decision at 1.

The Tribe appealed the Superintendent's decision to the Regional Director. On December 19, 2000, the Regional Director issued a decision in which he stated:

Under ordinary circumstances, this office would agree that the Cahto Tribe has a right to interpret its own laws and to determine its own membership, and that the BIA has no right to interfere in this situation; however, after reviewing this case and the gravity of injustice inflicted on the Sloan family, I fully support the decision of the Superintendent not to recognize the Tribe's decision to disenroll members of the Sloan family based on the Tribe's misinterpretation of the Hoopa/Yurok Settlement Act and its misapplication of Article III of its Articles of Association.

Regional Director's Decision at 2.

The Tribe appealed this decision to the Board. The Tribe and the Sloan/Hecker family have filed briefs. Both parties argue the merits of the disenrollment issue. The Tribe also contends that, under the circumstances of this case, neither the Regional Director nor the Superintendent had any authority to issue decisions on the disenrollment issue.

The Board does not reach the merits of the enrollment dispute because it agrees with the Tribe that the BIA officials lacked decision-making authority in the circumstances here.

The Superintendent's decision did not identify the authority under which he purported to act. Similarly, the Regional Director's decision failed to identify any authority for the action taken by either BIA official. Indeed, both decisions cited the well-established practice under which BIA refrains from interfering in internal tribal matters, particularly with respect to issues concerning tribal membership.

It is perhaps arguable that the Tribe gave BIA authority to review its disenrollment action when, on September 29, 1995, its attorney sought BIA recognition of the tribal action. However, BIA acted on that request on October 4, 1995, when the Superintendent referred the matter back to the Tribe. The Superintendent's letter was both a decision on the attorney's request and an exercise of whatever review authority the Tribe gave the Superintendent through its attorney's letter. There is no indication that the Tribe ever renewed its request for BIA recognition of the disenrollment action after the Superintendent acted upon it through his October 4, 1995, response. Although the Tribe later corresponded with BIA about the matter, the Tribe's statements are simply responses to BIA concerns, rather than an affirmative grant of authority to review the Tribe's action.

Even where a tribe has given BIA formal authority to review tribal actions through its constitution or ordinances, that authority must be narrowly construed, and BIA review must be undertaken in such a way as to avoid unnecessary interference with the tribes' right to self-

government. Wells v. Acting Aberdeen Area Director, 24 IBIA 142, 145 (1993); Ute Indian Tribe of the Uintah and Ouray Reservation v. Phoenix Area Director, 21 IBIA 24, 28 (1991).

The Board concludes that, to the extent the Tribe gave BIA authority to review its action through its attorney's September 25, 1995, letter, that ad hoc authorization was no longer extant on February 18, 2000, when the Superintendent issued his decision.

Another possible source of authority for BIA action is the enrollment appeal regulations in 25 C.F.R. Part 62. One of the disenrolled individuals, Gene Sloan, filed appeals with the Regional Director on May 13, 1999, June 24, 1999, and August 2, 1999, and an appeal with the Superintendent on August 2, 1999. However, neither the Superintendent nor the Regional Director stated in his decision that he was acting on Sloan's appeals. 2/

25 C.F.R. § 62.4(a) provides:

A person who is the subject of an adverse enrollment action may file or have filed on his/her behalf an appeal. An adverse enrollment action is:

* * * * *

(3) The rejection of an application for enrollment or the disenrollment of a tribal member by a tribal committee when the tribal governing document provides for an appeal of the action to the Secretary.

The Tribe's Articles of Association do not provide for an appeal to BIA from tribal enrollment or disenrollment decisions. However, the Tribe's Ordinance No. 1, concerning enrollment, provides that tribal decisions which disapprove enrollment applications may be appealed to BIA. The parties disagree as to whether this provision applies to tribal disenrollment decisions.

Depending upon how 25 C.F.R. § 62.4(a)(3) and the Tribe's enrollment ordinance are interpreted, it is conceivable that BIA would have jurisdiction over the issue here in the context of Sloan's appeals. Because the Board has no jurisdiction over appeals brought under 25 C.F.R. Part 62 (e.g., Ute Mountain Ute Tribe v. Southwest Regional Director, 36 IBIA 218 (2001)), it declines to interpret Part 62 or the Tribe's ordinance for the purpose of determining whether Sloan's appeals would be cognizable under that part.

2/ The record does not show what action, if any, BIA took on Sloan's appeals.

For present purposes, it is enough to note that neither the Superintendent nor the Regional Director purported to address Sloan's appeals. Therefore, the Board concludes that neither the Superintendent nor the Regional Director purported to, or did, act under authority granted in 25 C.F.R. Part 62.

The Board is not aware of any explicit authority under which BIA could have acted in this case. There are, however, some circumstances in which BIA may act without explicit authority. The Board discussed this point in Wells, supra, 24 IBIA at 145:

Both the Federal courts and the Board have recognized that there are times when, despite the lack of specific statutory authority, BIA must make determinations concerning intra-tribal disputes, most often those disputes involving tribal elections or the removal of tribal officials from office. BIA's authority to make these determinations derives from its responsibility to carry out the government-to-government relationship and its concomitant need to know whether a tribal governing body is properly constituted and therefore qualified to represent the tribe in dealings with BIA. E.g., Goodface v. Grassrope, 708 F.2d 335 (8th Cir. 1983); Greendeer v. Minneapolis Area Director, 22 IBIA 91 (1992). Even in these circumstances, however, BIA must avoid unnecessary intrusions into tribal self-government.

The Sloan/Hecker family contends that BIA was authorized to act in this case in order to protect the integrity of the government-to-government relationship. As the Tribe points out, however, BIA has continued to recognize the elected leaders of the Tribe despite the existence of the enrollment dispute. As far as the record shows, BIA has consistently acknowledged the authority of those leaders to act for the Tribe in its dealings with BIA. The record does not show that the government-to-government relationship has been impaired by the enrollment dispute.

The Sloan/Hecker family also argues that BIA was authorized to act because the Tribe's disenrollment action was a violation of the Indian Civil Rights Act (ICRA), 25 U.S.C. § 1302. The Board has held that, in cases where BIA has authority to review a tribal action, it has the authority and the responsibility to review the tribal action for violations of ICRA. E.g., Torres v. Acting Muskogee Area Director, 34 IBIA 173 (1999); 3/ Naylor v. Sacramento Area

3/ Torres involved both a tribal membership issue and an issue concerning BIA's recognition of a tribal governing body. The two issues in that case were inextricably intertwined. Here, as discussed above, there is no issue concerning recognition of the Tribe's governing body.

Director, 23 IBIA 76 (1992); Greendeer, *supra*. However, the Board has also held that ICRA is not an independent grant of authority and does not authorize BIA to scrutinize tribal actions not otherwise properly within its jurisdiction. Welmas v. Sacramento Area Director, 24 IBIA 264, 272 (1993).

Historically, tribal membership has been considered a matter within the exclusive province of the tribes themselves. As was observed by the Supreme Court in Santa Clara Pueblo v. Martinez, 436 U.S. 49, 72 n.32 (1978), “[a] tribe's right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community.” Thus, the Federal courts have traditionally refrained from intruding into tribal membership decisions. See, e.g., Smith v. Babbitt, 100 F.3d 556, 559 (8th Cir. 1996), *cert. denied*, 522 U.S. 807 (1997), quoting with approval from the district court decision it was reviewing: “[T]here is perhaps no greater intrusion upon tribal sovereignty than for a federal court to interfere with a sovereign tribe’s membership determinations.” See also Ordinance 59 Ass’n v. U.S. Dept. of the Interior, 163 F.3d 1150 (10th Cir. 1998).

The Board’s decisions are consistent with the Federal court decisions. E.g., Welmas, *supra*. As the record in this appeal demonstrates, BIA ordinarily follows a similar policy of non-interference. In this case, however, the Superintendent and the Regional Director abandoned that policy, evidently because they considered the Tribe’s disenrollment action to be particularly egregious.

BIA’s view of the merits of the Tribe’s action cannot change the underlying jurisdictional issue, which is analogous to the one addressed by the Tenth Circuit in Ordinance 59 Ass’n. After rejecting several jurisdictional theories asserted by the Association, that court stated:

No matter how this case is approached, the Association is asking this court to step in and tell a tribal government what to do in a membership dispute. Whether federal intervention would be right, wrong, or well-intentioned, that intervention is exactly the kind of interference in tribal self-determination prohibited by Santa Clara.

163 F.3d at 1157.

No matter how strongly BIA believed the Tribe to be in error in this case, nothing presently before the Board shows that BIA had any jurisdiction, in the circumstances in which the issue arose, to render a decision in the Tribe’s disenrollment dispute.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Regional Director's December 19, 2000, decision and the Superintendent's February 18, 2000, decision are vacated. 4/

//original signed

Anita Vogt
Administrative Judge

//original signed

Kathryn A. Lynn
Chief Administrative Judge

4/ The Board does not remand this matter to the Regional Director because there is no evident need for action on his part. It is conceivable, however, that the Tribe is still interested in attempting mediation to help it resolve its internal problems. If that is the case, and the Tribe is not able to locate a mediator on its own, the Regional Director may wish to consult the Department's Office of Collaborative Action and Dispute Resolution for assistance in locating a mediator. Information about that office may be obtained from the Board.

All pending motions and requests are denied.