



DEPARTMENT OF THE INTERIOR HEARINGS DIVISION

Ninilchik Traditional Council v. Director, Alaska Area Native Health Service,
Indian Health Service

Docket No. IBIA 99-72-A (08/02/2000)

Related Indian Self-Determination Act cases:

Administrative Law Judge decision, 10/14/1999

Health and Human Services Appeals Board decision, 12/07/1999



United States Department of the Interior

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August 2, 2000

NINILCHIK TRADITIONAL COUNCIL,	:	IBIA 99-72-A
	:	
Appellant	:	Appeal of December 23, 1998, decision issued by Director, Alaska Area Native Health Service, Indian Health Service
v.	:	
	:	Indian Self Determination ACT (ISDA)
DIRECTOR, ALASKA AREA NATIVE HEALTH SERVICE, INDIAN HEALTH SERVICE,	:	25 U.S.C. §§ 450-450n
	:	
Appellee	:	

RECOMMENDED DECISION

Appellee has filed a motion to dismiss and Appellant has filed a motion for summary judgment. The motions have been briefed, oral argument was heard July 13, 2000, and they are now ripe for decision. All briefs and arguments have been fully considered.

This appeal involves Appellee's partial declination of Appellant's proposal for indirect type contract support costs (CSC) as part of its fiscal year (FY) 1999 annual successor funding agreement under an existing Indian Self-Determination Act (ISDA) contract. The parties have reached a partial settlement agreement in which they agree that an additional \$68,079 should have been paid by Appellee to Appellant for fiscal year FY 1999 CSC.

However, this settlement does not resolve the matter because Appellee correctly notes that the provision of funds under the ISDA is subject to the availability of appropriations, 25 U.S.C. § 450j-1(b), and it argues that there are no appropriations available to pay the additional \$68,079 in CSC for FY 1999. Thus, the sole remaining issue to be decided is whether there are appropriations available to Appellee to pay the amount of \$68,079 to Appellant for FY 1999 CSC.

Appellee contends, Appellant does not dispute, and the facts and law establish, that no FY 1999 funds remain available to pay the amount of \$68,079. Appellant contends, however, that FY 2000 funding can be, and should be, used by Appellee to pay the additional FY 1999 CSC of \$68,079. Appellee disputes this contention.

The parties dispute stems from differing interpretations of the appropriations act by which Appellee received its FY 2000 funding for CSC. This is a legal issue which is appropriate for determination by motion to dismiss or motion for summary judgment.

Appellee argues that section 313 of the FY 2000 appropriations act precludes payment of the FY 1999 CSC with FY 2000 funding by limiting the total amount of funding available for CSC for fiscal years 1994 through 1999 to the CSC appropriations made in the appropriations acts for those years. Section 313 provides:

Notwithstanding any other provision of law, amounts appropriated to or earmarked in committee reports for the Bureau of Indian Affairs and the Indian Health Service by Public Laws 103-138, 103-332, 104-134, 104-208, 105-83, and 105-277 for payments to tribes and tribal organizations for contract support costs associated with self-determination or self-governance contracts, grants, compacts, or annual funding agreements with the Bureau of Indian Affairs or the Indian Health Service as funded by such Acts, are the total amounts available for fiscal years 1994 through 1999 for such purposes, except that, for the Bureau of Indian Affairs, tribes and tribal organizations may use their tribal priority allocations for unmet indirect costs of ongoing contracts, grants, self-governance compacts, or annual funding agreements.

Consolidated Appropriations Act, 2000, Appendix, Department of the Interior and Related Agencies, H.R. 3423, § 313, Pub. L. No. 106-113, 113 Stat. 1537-188 (Nov. 29, 1999). The public laws referenced in section 313 are the appropriations acts for fiscal years 1994 through 1999.

Appellant counters that the following language of the act allows for the use of FY 2000 appropriations to fund the FY 1999 CSC associated with its ISDA contract formed prior to FY 2000:

Provided further, That, notwithstanding any other provision of law, of the amounts provided herein, not to exceed \$228,781,000 shall be for payments to tribes and tribal organizations for contract or grant support costs associated with contracts, grants, self-governance compacts, or annual funding agreements between the Indian Health Service and a tribe or tribal organization pursuant to the Indian Self-Determination Act of 1975, as amended, prior to or during fiscal year 2000.

Consolidated Appropriations Act, 2000, Pub. L. No. 106-113, Appendix-H.R. 3423, Title II, 113 Stat. 1501, 1537-178 (emphasis added). Appellant argues that this language, when contrasted with section 313, creates an ambiguity as to whether FY 2000 appropriations may be used to fund FY 1999 CSC. It further argues that section 313 can be read as not precluding

use of FY 2000 funds to pay for FY 1999 CSC but, rather, as merely precluding payment of FY 1999 CSC with program money from those FY 1999 appropriations not "earmarked" for CSC. It concludes that the act ought to be construed in its favor in keeping with the doctrine that statutes passed for the benefit of Indians are to be construed in their favor. See FELIX X. COHEN'S HANDBOOK OF FEDERAL INDIAN LAW 221 (1982 ed.).

Appellee disagrees, stating:

This tribunal should dismiss this case because Section 313 of the FY 2000 appropriations act unambiguously prohibits the use of FY 2000 funds for FY 1999 CSC while the FY 2000 appropriating language does not explicitly state the FY 2000 funds are available for FY 1999 purposes. Instead, when these two provisions are read together, the appropriations cap on available CSC for FY 2000 does not authorize the use of FY 2000 CSC funds for CSC in FY 1999, but simply identifies the contracts funded in FY 2000 that are subject to the cap.

Appellee cogently argues that Appellant's interpretation of section 313 would render it superfluous because the FY 1999 appropriation act previously established that program funds not earmarked for CSC could not be used for CSC in fiscal years 1994 through 1999. It did so through two provisions, the first capped FY 1999 appropriations for CSC and the second capped appropriations for CSC for fiscal years 1994 through 1998. The first provides: "Notwithstanding any other provision of law, of the amounts provided herein, not to exceed \$203,781,000 shall be for payments to tribes and tribal organizations for contract or grant support costs * * *." Pub. L. No. 105-277, § 152. The second is identical in language to section 313, except that it does not refer to FY 1999 appropriations. Id., § 314.

Appellee is correct in asserting that the primary purpose of the language cited by Appellant is to cap the amount of CSC which IHS may allocate from the FY 2000 appropriation and that the "support costs associated with contracts * * * [executed] prior to or during fiscal year 2000" language merely identifies those agreements executed in advance of FY 2000 that are subject to the cap. The need for language referring to contracts executed prior to fiscal year 2000 is explained by the fact that the ISDA contemplates that an annual funding agreement should be awarded by IHS to a tribe no later than thirty days prior to the fiscal year covered by the agreement.¹

¹ Under the model ISDA contract, negotiations for a successor annual funding agreement between a tribe and IHS are to begin no later than 120 days before the end of the preceding annual funding agreement. 25 U.S.C. § 450l(c) at (b)(14)(A). IHS then has 90 days to review and award or decline a proposal for a self-determination contract or an annual funding agreement. 25 U.S.C. § 450f(a)(2). Thus, the ISDA envisions that an annual funding agreement

Appellant's position is further belied by a comparison of that language to provisions of the FY 2000 appropriation act which clearly do extend an appropriations availability for obligation to fiscal years other than FY 2000. Section 304 of the FY 2000 appropriation act limits the availability of FY 2000 funds for obligation to FY 2000 unless Congress provides otherwise. See also 31 U.S.C. § 1502. When Congress sought to extend an appropriation's availability for obligation outside FY 2000, it used language such as "shall remain available until expended," Pub. L. No. 106-113, 113 Stat. 1537, 1537-178 (regarding the Catastrophic Health Emergency Fund), or "shall remain available for obligation until September 30, 2001" (regarding contract medical care funds). Id. The language upon which Appellant relies simply does not address "availability" or extend the availability of funds but, rather, establishes a cap on funding for CSC.

Application of the canon that ambiguous statutes are to be interpreted in favor of Indians does not dictate a different result. Appellant's argument, if accepted, would reduce the amount of funding available to all other Indian tribes and thus does not favor Indians as a whole. In a case such as this, where Appellant's position is at odds with the interests of other Indian tribes, either the canon does not apply or it favors rejection of Appellant's position.

Finally, Appellant references the fact that its position is consistent with an interpretation of section 313 which is evidenced in a settlement agreement executed by the Bureau of Indian Affairs in another matter. Any such settlement agreement has no precedential weight or binding effect in this proceeding.

Based upon the foregoing, Appellee's motion to dismiss is hereby granted.

//original signed
Harvey C. Sweitzer
Administrative Law Judge

should be awarded no later than 30 days prior to the fiscal year covered by the agreement.