



INTERIOR BOARD OF INDIAN APPEALS

Ronald J. Wopsock, Luke J. Duncan, and an Unknown Number of Unnamed Members of the Uintah and Whiteriver Bands of the Ute Indian Tribe of the Uintah and Ouray Indian Reservation v. Western Regional Director, Bureau of Indian Affairs

42 IBIA 117 (01/06/2006)

Related Board cases:

40 IBIA 24

42 IBIA 106



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

RONALD J. WOPSOCK, LUKE J.	:	Order Affirming Decision
DUNCAN, and an UNKNOWN	:	
NUMBER OF UNNAMED MEMBERS	:	
OF THE UINTAH AND WHITERIVER	:	
BANDS OF THE UTE INDIAN TRIBE	:	
OF THE UINTAH AND OURAY	:	
INDIAN RESERVATION,	:	
Appellants,	:	Docket No. IBIA 04-106-A
	:	
v.	:	
	:	
WESTERN REGIONAL DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee.	:	January 6, 2006

This is an appeal from a May 3, 2004 decision of the Western Regional Director, Bureau of Indian Affairs (Regional Director; BIA) concerning Ordinance No. 03-002, enacted on October 25, 2003 by the Business Committee of the Ute Indian Tribe of the Uintah and Ouray Reservation (Tribe). Appellants are two former members of the Tribe’s Business Committee, and an “unknown number of unnamed” individual tribal members.

The BIA Uintah and Ouray Agency Superintendent (Superintendent) purported to approve Ordinance No. 03-002 on or about October 30, 2003, and Appellants appealed that approval to the Regional Director. In the decision now under review, the Regional Director determined that the Superintendent’s approval was not required and “had no effect on the validity or invalidity of the ordinance.” He correspondingly dismissed the appeal before him, concluding that the Tribe has sole authority over the enactment of Ordinance No. 03-002. For the reasons discussed below, the Board affirms the Regional Director’s dismissal of Appellants’ appeal.

Background

Most of the facts underlying this dispute are as set forth in a related case, Jenkins v. Western Regional Director, 42 IBIA 106 (2006). Except as necessary to address specific issues in this appeal, we will not repeat or expand upon the facts here.

The two named appellants in this appeal are former members of the Tribe's Business Committee, expelled from that body on October 21, 2003, ostensibly in accordance with the provisions of Article V, section 2 of the Tribe's constitution. After their expulsion, the remaining members of the Business Committee enacted Ordinance No. 03-002, "To Amend Ordinance No. 93-06, As Amended, Governing Recall, Referendum and Elections of the [Tribe]." The ordinance imposed a variety of restrictions on the nomination of previously expelled Business Committee members.

After passing Ordinance No. 03-002, the Business Committee submitted it to the Superintendent for approval, which he provided on or about October 30, 2003. Appellants appealed that approval decision to the Regional Director on November 17, 2003. On December 17, 2003, the Business Committee wrote to the Superintendent and argued that Ordinance No. 03-002 should not have been sent to BIA for approval at all, because Article IV of the Tribe's constitution reserved the regulation of the election process to the Tribe alone and Ordinance No. 03-002 fell within that authority. The Regional Director responded to the Tribe's letter on December 19, 2003, stating that "the Superintendent's approval action was not needed and had no effect on the validity or invalidity of the resolution."

On the same day, December 19, 2003, the Tribe moved to have the Regional Director dismiss Appellants' appeal before him as moot. The Regional Director dismissed the appeal in a decision dated May 3, 2004, "on the grounds that the Tribe has sole authority over Ordinance No. 03-002 and must resolve any disputes arising from the passage of that ordinance, and that the Superintendent's purported approval had no effect on the validity or invalidity of the ordinance." May 3, 2004 Decision at 2. 1/

Appellants appealed the Regional Director's decision. Appellants, Appellee and the Tribe have all fully briefed their positions to the Board.

1/ Appellants brought an earlier appeal to the Board concerning the Regional Director's failure to act on the appeal before him, in accordance with 25 C.F.R § 2.8. By rendering a decision on May 3, 2004, the Regional Director made that appeal moot, and we correspondingly dismissed the appeal. Wopsock v. Western Regional Director, 40 IBIA 24 (2004).

Discussion

Appellants Wopsock and Duncan maintain that their initial expulsion from the Business Committee violated applicable tribal law, and that Ordinance No. 03-002 was passed to further that violation by preventing their prompt re-election. 2/ Appellants argue that Ordinance No. 03-002 limits nominations and elections in direct conflict with provisions of the Tribe's constitution, and that under a variety of theories BIA officials have an affirmative duty to intervene and correct several corresponding affronts to Appellants' rights.

Appellants take no satisfaction in the relief that the Regional Director actually provided in their appeal before him — withdrawing BIA's purported approval of Ordinance No. 03-002. Instead, Appellants claim that the Regional Director should have gone further. At the very least, Appellants believe the Regional Director should have: declined to recognize Appellants' expulsion from the Business Committee; rejected the results of an election held in December, 2003 to replace Appellants on the Business Committee — an election from which Appellants were excluded; declared the Business Committee invalidly constituted until specified concerns relating to Appellants' expulsion were addressed; and, possibly, sanctioned the Superintendent for allegedly abandoning his trust duties and acting under the motivation of a conflict of interest. It also appears that Appellants believe the Regional Director should have disapproved Ordinance No. 03-002, even while conceding that ordinances covering election procedures are not subject to BIA approval. 3/

In addition to seeking all the relief Appellants believe they ought to have been given by the Regional Director, Appellants appear also be seeking from the Board such things as a receiver to administer tribal affairs until elections are conducted in a manner Appellants believe lawful; an investigation of internal tribal matters by the Department's Office of the Inspector General; and money damages.

2/ According to Appellants Wopsock and Duncan, Ordinance No. 03-002 would effectively keep them from being re-elected to the Business Committee until at least 2009.

3/ Compare Appellants' Notice of Appeal at 3; Appellants' Opening Brief at 23; and Appellants' Reply at 13 with Appellants' Opening Brief at 48, n.10; and Appellants' Reply at 13-14, n.13. Appellants reconcile these apparently contradictory views by asserting that Ordinance No. 03-002 is an ordinance in name only, and that it is really the functional equivalent of an amendment to the Tribe's constitution, subject to Secretarial review under the Indian Reorganization Act, 25 U.S.C. § 476 et seq. (IRA) .

In the related Jenkins case, appellants were individual members of the Tribe who wanted to pursue the recall of a Business Committee member from their band. One thing allegedly standing in their way was Ordinance No. 03-004, another tribal ordinance passed by the Business Committee, which added requirements to the recall procedures described in the Tribe's constitution. In that case the Board determined that, even assuming the issues not rendered moot by the Regional Director's decision were within the scope of the appeal, Appellants lacked standing as individual tribal members to raise them. See Jenkins, 42 IBIA at 111-15.

For the same reason, we conclude that the unnamed individual tribal member Appellants in this appeal lack standing, and dismiss them as Appellants. Appellants Wopsock and Duncan, however, apparently seek to bring this appeal as ex-members of the Business Committee and as unsuccessful candidates who were denied the right to run in an election because of Ordinance No. 03-002. It is at least arguable that, under the right set of circumstances, Appellants Wopsock and Duncan could establish their standing to pursue some of the grievances and relief they raise in this appeal. The problem for them is that this appeal does not present the right set of circumstances. The Regional Director's decision was narrowly tailored to address a very specific appeal concerning the Superintendent's purported approval of Ordinance No. 03-002. He addressed that appeal by nullifying the approval. Despite Appellants' careful effort to frame their many other issues in terms of Federal law and BIA's legal obligations, the fact remains that the specific BIA action *upon which their appeal was based* is no longer in effect, making all issues that rely upon it moot. All of Appellants' other grievances and requests for relief, to the extent they do not relate to the specific action of the Superintendent in approving the ordinance, are outside the scope of the appeal. See Burnette v. Assistant Secretary – Indian Affairs, 10 IBIA 464, 465 (1982).

The Tribe in this case specifically asked the Regional Director to dismiss the appeal before him on the grounds of mootness. December 19, 2003 Motion by Tribe to Regional Director. The Regional Director then issued his May 3, 2004 dismissal "on the grounds that the Tribe has sole authority over Ordinance No. 03-002 and must resolve any disputes arising from passage of that ordinance, and that the Superintendent's purported approval had no effect on the validity or invalidity of the ordinance." This decision was essentially a restatement of the conclusion he had already reached in his letter to the Tribe dated December 19, 2003, in which he said, "I find that the Superintendent's approval action was not needed and had no effect on the validity or invalidity of the resolution * * *."

The Regional Director's May 3, 2004 decision did not specifically mention the Tribe's December 19, 2003 Motion, or even use the word "moot," but we need not ignore the obvious. At the time of the Regional Director's dismissal, the only BIA action the

Appellants could point to as a basis for their appeal — the Superintendent’s purported approval of Ordinance No. 03-002 — had been nullified. All of Appellants’ other complaints relied upon that one jurisdictional “hook” in order to be considered by the Regional Director, at least in the context of that specific appeal. Any possible rationale for considering those complaints disappeared when the Superintendent’s action was withdrawn. The Regional Director’s decision was properly limited to deciding the particular issue before him, which concerned only whether or not the Superintendent had any authority to approve Ordinance No. 03-002.

The basis for the original appeal being moot, the Board has no more cause than did the Regional Director to consider Appellants’ many grievances about the way BIA officials are allegedly letting the Tribe take advantage of them. We have often stated that, as a prudential matter, the Board does not normally entertain the appeal of a BIA action that has become moot. See, e.g., Cheyenne River Sioux Tribe v. Acting Great Plains Regional Director, (“Although the Board is not bound by the case or controversy requirement of Article III of the U. S. Constitution, as a matter of prudence, the Board generally limits its jurisdiction to cases in which the appellant can show standing and where claims have not become moot.”) We also do not issue advisory opinions. See, e.g., Tabor v. Acting Southern Plains Regional Director, 39 IBIA 144, 149-150 (2003) (“In essence, Appellants urge the Board to ignore the limited issue that was before the Regional Director and issue an advisory opinion * * *. The Board declines Appellants’ invitation * * * when there is no Federal necessity to reach a conclusion on the issue * * *.”)

What defines the issues on appeal before the Board is the nature of the decision made or the action taken by a Federal official, not Appellants’ wish list of remedial actions that such an official might have taken in addition to remedying the specific wrong complained of — in this case, the Superintendent’s approval of Ordinance No. 03-002.

The issue of BIA’s authority in this case is not substantially different from the issue raised in Ute Indian Tribe of the Unitah and Ouray Reservation v. Phoenix Area Director, 21 IBIA 24, 30 (1991), where we reversed the Regional Director’s disapproval of an ordinance, holding that BIA had no authority to review portions of an ordinance concerning recall election procedures, passed by the Tribe’s Business Committee. It is therefore hard to see much controversy in the Tribe’s December 17, 2003 request that the Superintendent vacate his earlier approval of Ordinance No. 03-002, or in the Regional Director’s December 19, 2003 determination that the Superintendent’s approval action was of no effect whatsoever. We therefore have little trouble concluding that when the Regional Director dismissed Appellants’ appeal below, in response to a specific request from the Tribe that he do so on the basis of mootness, his dismissal was correct and for that reason. The controversy over the Superintendent’s purported approval of Ordinance No. 03-002

remains moot today. The panoply of additional actions that Appellants now contend the Regional Director should have taken were simply not within the scope of the appeal from the Superintendent's action, nor are they properly within the scope of this appeal.

Despite Appellants' many arguments, we do not see that the Regional Director had in this case an affirmative duty to render any more sweeping a decision than he did in his May 3, 2004 effort. We therefore have no basis to review any issues the Regional Director neither addressed nor decided. In fact, the Federal policy of deference to tribal self-determination counseled the Regional Director to keep his decision brief, and as narrowly-tailored as he could so as to keep BIA from unduly interfering in what is clearly an internal tribal dispute.

Any arguments not specifically addressed in this case, or in the companion Jenkins case, have been considered and rejected.

Conclusion

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 Board dismisses the unnamed Appellants for lack of standing, affirms the Regional Director's dismissal of Appellants' appeal, and finds that the additional issues raised by Appellants Wopsock and Duncan are outside the scope of the decision and therefore outside the scope of this appeal.

I concur:

// original signed
David B. Johnson
Acting Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge