



INTERIOR BOARD OF INDIAN APPEALS

Richard Boland, Grace Goad, Cindy Davis, Charlotte James, and Joe Kennedy v. Acting Pacific Regional Director, Bureau of Indian Affairs; Marilyn Mayfarth v. Pacific Regional Director, Bureau of Indian Affairs; Dan Shoshone, Erick Mason, Doreen Mason, Mark Lee, Janice Gonzalez, and Clifton Mason v. Pacific Regional Director, Bureau of Indian Affairs

42 IBIA 236 (03/03/2006)



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

RICHARD BOLAND, GRACE GOAD,	:	Order Dismissing Appeals
CINDY DAVIS, CHARLOTTE JAMES,	:	
and JOE KENNEDY,	:	
Appellants,	:	
v.	:	Docket Nos. IBIA 03-82-A
ACTING PACIFIC REGIONAL DIRECTOR,	:	IBIA 03-119-A
BUREAU OF INDIAN	:	IBIA 04-22-A
AFFAIRS,	:	
Appellee.	:	
	:	
MARILYN MAYFARTH,	:	
Appellant,	:	
v.	:	Docket No. IBIA 05-64-A
PACIFIC REGIONAL DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee.	:	
	:	
DAN SHOSHONE, ERICK MASON,	:	
DOREEN MASON, MARK LEE,	:	
JANICE GONZALEZ, and	:	
CLIFTON MASON,	:	
Appellants,	:	
v.	:	Docket No. IBIA 05-65-A
PACIFIC REGIONAL DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee.	:	March 3, 2006

All of these appeals concern various disputes over decisions made in 2003 and early 2005 by the Pacific Regional Director, Bureau of Indian Affairs (Regional Director; BIA), recognizing the composition of the Tribal Council of the Timbisha Shoshone Tribe (Tribe) for purposes of the Federal government-to-government relationship with the Tribe. With limited exceptions, all of the appellants have at one time or another claimed to be members

of the Tribal Council. 1/ The Board now dismisses these appeals as moot based on the Tribe's most recent election, held on November 8, 2005.

The first two appeals arose from March 5, 2003 and May 28, 2003 decisions of the Regional Director regarding competing November 2002 and December 2002 tribal elections. The "Boland Council," led by Richard Boland, asserted that it had been elected in the November 2002 election. The "Kennedy Council," led by Georgia Kennedy, claimed that the November election had been properly postponed and that it had been elected in the December 2002 election. In the March 5, 2003 decision, the Regional Director denied a request from the Boland Council, pursuant to 25 C.F.R. § 2.6, to make immediately effective an earlier decision by the BIA Superintendent of the Central California Agency (Superintendent) to recognize the results of the November 2002 election. 2/ The Boland Council appealed that denial to the Board (Docket No. IBIA 03-82-A). In the May 28, 2003 decision, the Regional Director reviewed both Councils' arguments on the merits, and concluded that the dispute should be remanded to the Tribe for exhaustion of tribal remedies. In the interim, however, the Regional Director recognized the Kennedy Council because it was the last council in place prior to the disputed November 2002 election. The Boland Council appealed to the Board (Docket No. IBIA 03-119).

Subsequently, on August 2, 2003, the Kennedy Council conducted a special tribal election to resolve the leadership dispute, electing an Interim Tribal Council until a regular election could be held. The special election was contested by the Boland Council. On October 30, 2003, the Regional Director recognized the August 2, 2003 special election as valid, with the following results: Shirley Summers, Chairperson; Erick Mason, Vice-Chairperson; Doreen Mason, Secretary-Treasurer; and Mark Lee and Dan Shoshone, Council Members ("Summers Council"). The Boland Council again appealed to the Board (Docket No. IBIA 04-22-A).

On March 29, 2004, the Board placed the Regional Director's October 30, 2003 decision, recognizing the Summers Council, into immediate effect pursuant to 25 C.F.R. § 2.6(a), on grounds of public exigency. Subsequently, however, the Summers Council itself splintered into factions.

1/ The Board ordered Mayfarth to show standing, and she filed a brief. Because these appeals are being dismissed, the Board need not address whether Mayfarth would otherwise have standing.

2/ The Superintendent had later recognized the Kennedy Council, leading to the Boland Council's section 2.6 request and to cross-appeals to the Regional Director.

On November 9, 2004, the Tribe held another election. ^{3/} On February 23, 2005, the Regional Director recognized the results of that election, as follows: Joe Kennedy, Chairperson; Ed Beaman, Vice-Chairperson; Virginia Beck, Secretary/Treasurer; Grace Goad, Executive Councilmember; and Melvin Holt, Executive Councilmembers. Marilyn Marfarth, Dan Shoshone, Erick Mason, Doreen Mason, Mark Lee, Janice Gonzalez, and Clifton Mason appealed to the Board (Docket Nos. IBIA 05-64-A and 05-65-A). ^{4/}

On June 1, 2005, the Board placed the Regional Director's February 23, 2005 decision into immediate effect pursuant to 25 C.F.R. § 2.6(a). The Board also ordered the parties to participate in an alternative dispute resolution assessment conference to determine whether they might be willing to resolve this tribal leadership matter internally, rather than have a Departmental decision imposed on the Tribe. Thereafter, the Board was orally advised by the Department's Office of Collaborative Action and Dispute Resolution that the tribal parties had engaged in efforts to resolve the dispute among themselves.

On December 12, 2005, the Board received from interested parties Joe Kennedy, Ed Beaman, Virginia Beck, Grace Goad, Melvin Holt and Shirley Summers, "supplemental evidence" and a report on a November 8, 2005 general election held by the Tribe. Based on the Board's review of the materials submitted, it appeared that at least some individual appellants from each appeal pending before the Board reached an agreement in July 2005 regarding a process for the November 2005 election and for tribal resolution of this matter in lieu of pursuing these appeals. The supplemental evidence also indicated that the various factions cooperatively selected an election board and that candidates in the November 2005 election included individuals from both groups of council-appellants in these appeals. Included with the submission was a November 22, 2005 letter from Joe Kennedy to the Superintendent, reporting that the Election Board had certified the election, no appeals had been filed concerning the conduct or results of the election, and the three candidates receiving the highest votes in the election were Joe Kennedy, Virginia Beck, and Cleveland "Lyle" Casey.

^{3/} The Tribe's constitution calls for an annual general election in November to vote for Tribal Council members whose terms are expiring. Timbisha Shoshone Constitution, Article VI, Section 4.b.

^{4/} Previously, the Board had consolidated Docket Nos. IBIA 03-82-A, 03-119-A, and 04-22-A. The Board now consolidates Docket Nos. 05-64-A and 05-65-A with the previous consolidated appeals for purposes of this order of dismissal.

On December 13, 2005, the Board requested a status report by January 6, 2006 from the parties stating whether the November 8, 2005 tribal election rendered these appeals moot or whether the parties otherwise agreed that these appeals should be dismissed. On January 9, 2006, at the request of Appellants Shoshone et al. in 05-65-A, the Board granted the parties until January 13, 2006 to file a status report.

No status report was filed, no request for a further extension was received, and no party has filed an objection to or taken issue with the December 12, 2005 supplemental evidence and report.

It is clear from the December 12, 2005 submission that at least some of the appellants consider the November 8, 2005 election as resolving the leadership dispute within the Tribe, which would render moot the disputes concerning prior elections. See Smith v. Acting Pacific Regional Director, 42 IBIA 224 (2006), and cases cited therein (“a valid election held during the pendency of an appeal moots any questions concerning prior tribal leadership”). The supplemental evidence does not show that all of the appellants in these pending appeals affirmatively endorsed the results of the November 8, 2005 election, but that is not required in order for the Board to conclude that this appeal is moot. When a tribal election has been held, the burden of proof is on the appellant from a prior leadership dispute to demonstrate that the prior dispute was not rendered moot by the subsequent election. See Hamilton v. Acting Sacramento Area Director, 29 IBIA 122, 123 (1996).

In the present case, except for the requested extension, which has now long expired, no party filed a response to the Board’s December 13, 2005 order or otherwise asserted after the most recent tribal election that these appeals were not moot. Therefore, even assuming the November 8, 2005 election did not fully resolve the underlying dispute within the Tribe, no party to these appeals has met its burden of proof before the Board, and dismissal is appropriate. Unresolved issues, if any, should first be addressed within the Tribe itself, rather than through these appeals.

Therefore, based on the supplemental evidence submitted to the Board on December 12, 2005 and the lack of any response, and 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 these appeals as moot.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Amy B. Sosin
Acting Administrative Judge